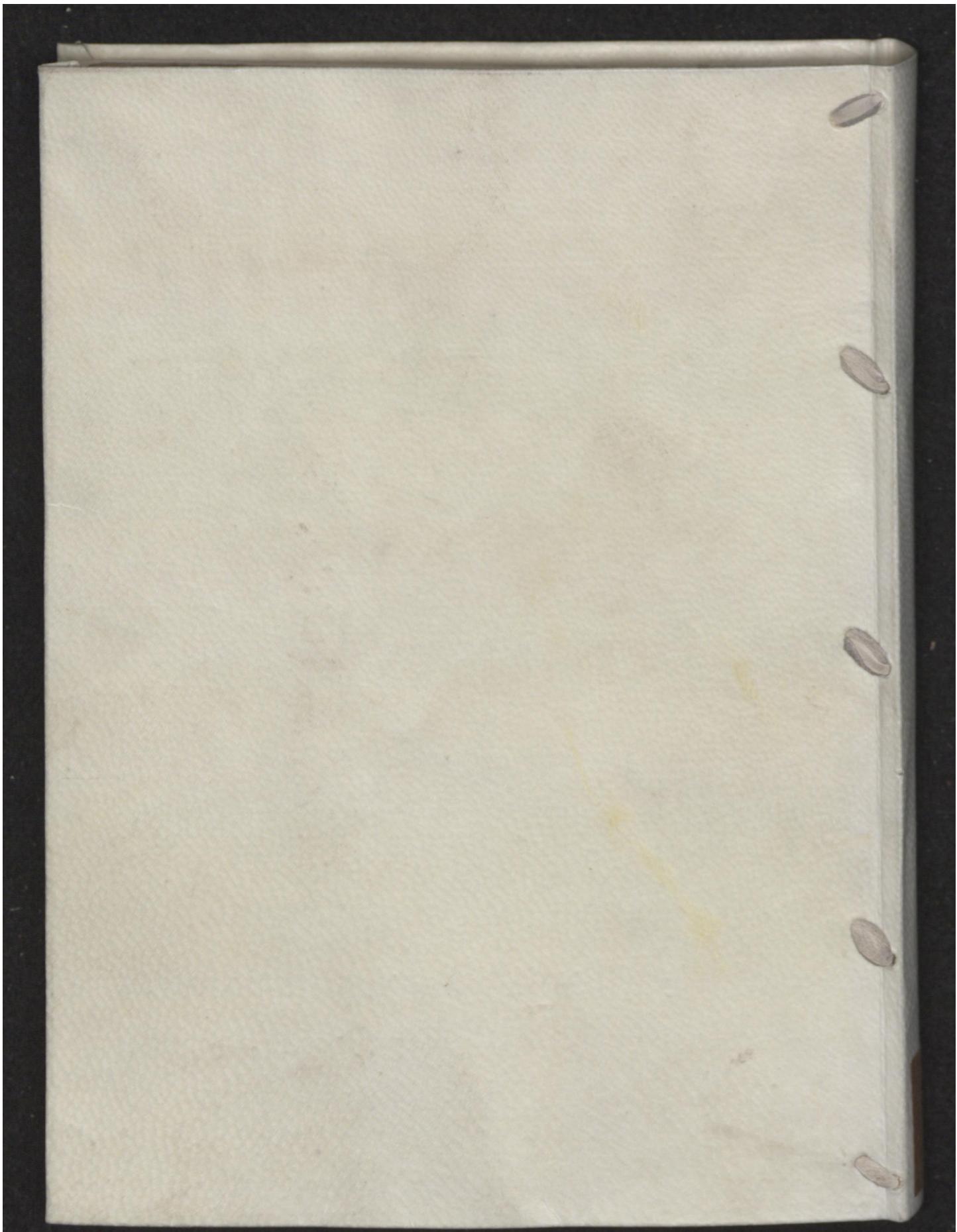


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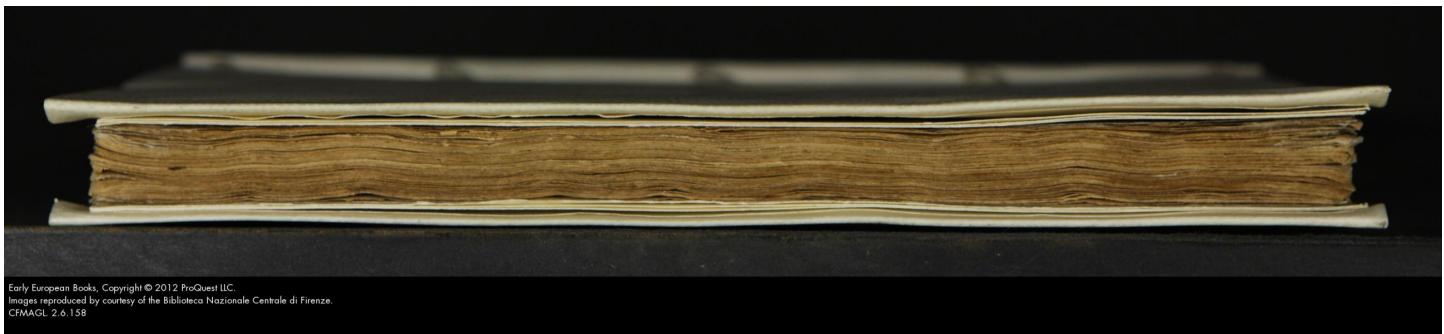




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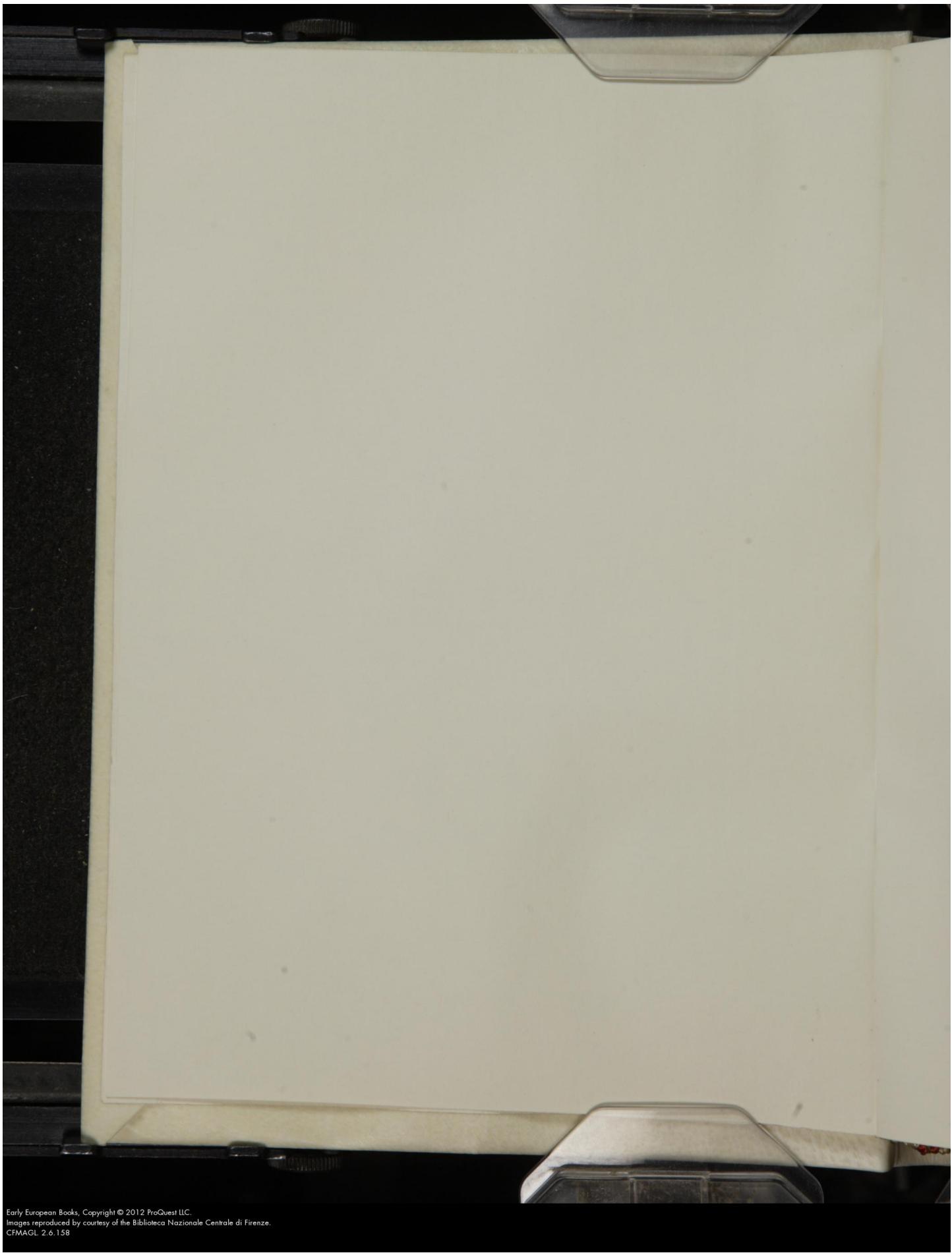


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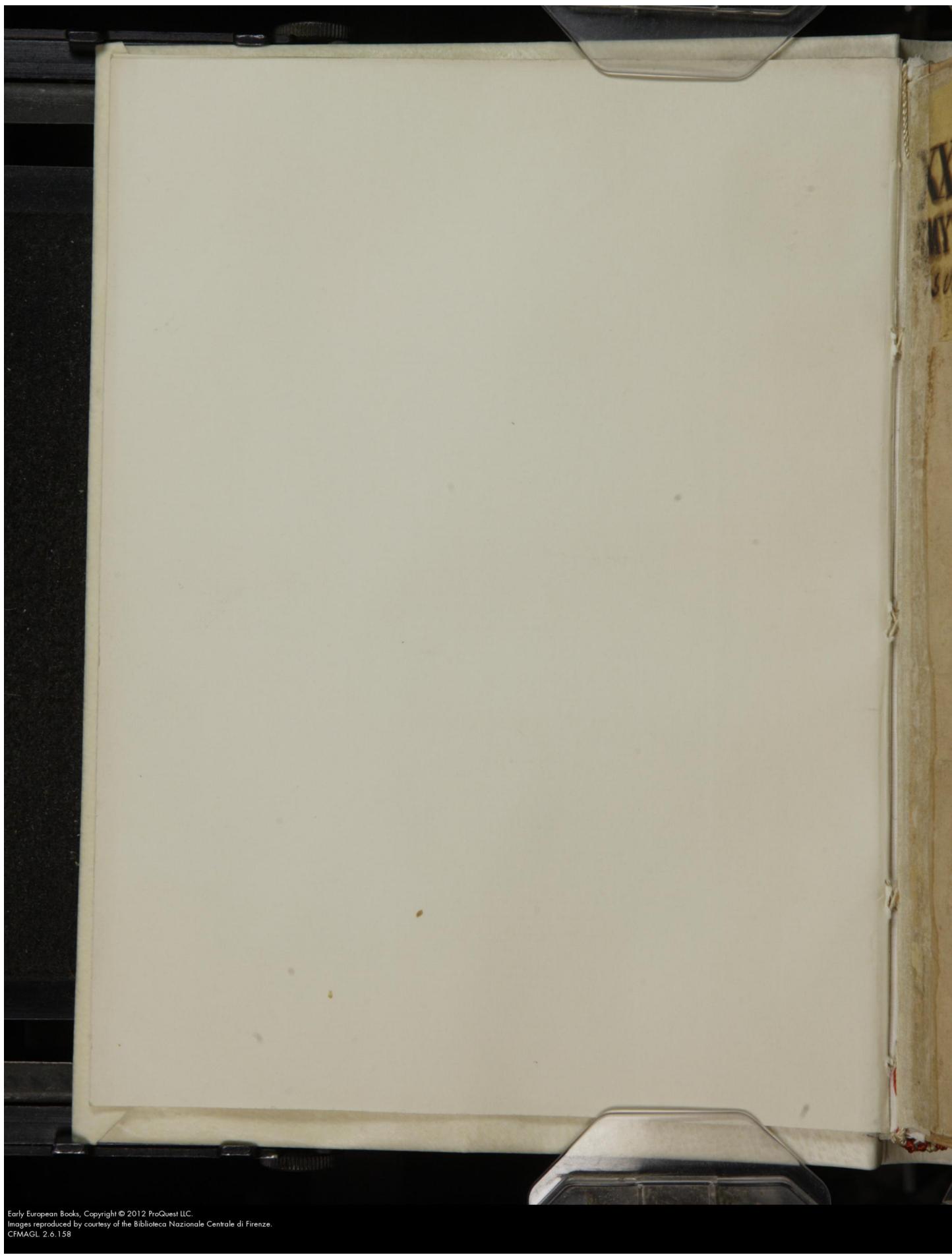


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DE
REPVBBLICA
ANGLORVM.

*The maner of Gouernement or
policie of the Realme of Eng-
land, compiled by the Honora-
ble Sir Thomas Smyth Knight,
Doctor of both the lawes, and
one of the principal Secre-
taries vnto the two most wor-
thy Princes, King Edward
the sixt, and Queene
Elizabeth.*

Seene and allowed.

*AT LONDON,
Printed by Henrie Midleton
for Gregorie Seton,*

*Anno Domini
1584.*



DE BONI

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To the Reader.



To conceale the graces inspired by God, or the giftes ingraffed by nature, or the vertues atchiued vnto ourselues by industrie, in all ages and of all wise men was accounted vnduetifulnesse, vnkindnesse & impietie vnto that comon wealth, in the which, and vnto the which we are both bred and borne: but to supprese the worthie works of any author, may iustly be iudged not only iniurie to the person, but euen enuie at the whole world. VVherefore chauncing vpon this short discourse compiled by the honorable knight sir Thomas Smyth, and consideringe that the same could not but be a great light vnto the ignorant, & no lesse delight vnto the learned in the lawes and policie of sundrie regiments: I thought it part of my dutie, as wel for reuiuing of the fame of so notable a man, as for the publike imparting of so pythie a treatise, to present the same vnto thy indifferet and discrete iudgement. VVherein althought the errors & rashnes of Scribes, appearing in the contrarietie & corruption of cop-

A 2 pies

To the Reader.

pies, happening both by the length of time si-
thens the first making, as also by the often tran-
scripting might iustly haue been mine excuse or
rather discourage: yet weyng the authoritie
of the author togither with the grauitie of the
matter, I made no doubt but that the reuerence
due vnto the one, & the recompence deserued
by the other would easily counteruail all faults
committed by a clarke & writer. And whereas
some termes or other matters may seeme to dis-
sent from the vsual phrase of the cōmōn lawes
of this realme: notwithstanding to him that will
consider that the profession of the maker was
principally in the ciuil lawes, and therefore not
to be expected as one excellent in both, & also
that the finishing of this worke was in Fraunce
farre from his librarie, and in an ambassad euen
in the midst of waightie affaires, it cannot nor
ought not without great ingratitudo be disple-
asant or in any sort disliking. VWherefore(gentle
Reader)accepting good part my zeale and this
honorable mans trauaile: assuring thy self that
the same framed by an expert workemaister,
and forged of pure and excellent mettall, will
not faile in proouing to be a right commodi-
ous instrument.

Vale

A NECESSARIE
Table of all the principall
matters contained in
this Booke.



F the diuersities of common wealthes or gouvernements. Chapter 1. Pagina 1.	
What is iust or Lawe in euerie common wealth or gouvernement. cap. 2. pag. 2.	
An other diuision of common wealthes, chap. 3.	pag. 3.
Example of chaunges in the manner of gouvernement. chap. 4.	pag. 3.
Of the question what is right and iust in euerie com- mon wealth. chap. 5.	pag. 4.
That common wealths or gouvernements are not (most commonly) simple but mixt, chap. 6.	pag. 5.
The definition of a King and of a Tyrant. chap. 7. pag. 6	
Of the absolute king. chap. 8.	pag. 7.
Of the name king and the administration of Eng- land. chap. 9.	pag. 9.
What is a common wealth, and the partes thereof. chap. 10.	pag. 10.
The first sort or beginning of an house or familie called <i>oikoupolis</i> . chap. 11.	pag. 12.
The first & natural beginning of a kingdome, in Greeke <i>paionela</i> . chap. 12.	pag. 13.
The first and naturall beginning of the rule of a fewe of the best men called in Greeke, <i>Aeisopatia</i> . ca. 13. pa. 14.	
The first originall or beginning of the rule of the multi- tude called <i>politeia</i> or <i>demokratia</i> . chap. 14. pag. 16.	
That the common wealth or policie must be according to the nature of the people. chap. 14.	pag. 17.
The diuision of partes and persons of the common wealths. chap. 16.	pag. 18.

The Table.

The first part of Gentlemen of England called <i>Nobilitas maior.</i> chap. 17.	pag. 20.
Of the second sort of Gentlemen of England called <i>Nobilitas minor,</i> and first of knights. chap. 18.	pag. 21.
Of Esquires. chap. 19.	pag. 25.
Of Gentlemen. chap. 20.	pag. 26.
Whether the maner of Englande in making Gentlemen so easilie is to be allowed. chap. 21.	pag. 28.
Of Citizens and Burgeses. chap. 22.	pag. 29.
Of Yeomen. chap. 23.	pag. eademi.
Of the fourth sort of men which do not rule. ca. 24.	p. 33.

The second booke.

Of the Parliament and authoritie therof. ca. 1.	pa. 34.
The forme of holding the parliament. ca. 2.	pa. 35.
Of the Monarch, King or Queene of England. ca 3.	p. 43.
The chiefe points wherein one common wealth doeth differ from an other. chap. 4.	pag. 47.
Of the three maners and formes of trials or iudgements in England. chap. 5.	pag. 48.
Triall or judgement by Parliament. chap. 6.	pag. ead.
Triall of judgement by battle. chap. 7.	pag. 49.
The triall by Assise or xij. men, & first of the three parts which be necessarie in judgement. chap. 8.	pag. ead.
Of Pleas or Actions. chap. 9.	pag. 50.
Of the chiefe Tribunals, Benches or Courtes of England. chap. 10.	pag. 51.
Of the times of pleading called Termes, and of the Chauncellor and Chauncerie. chap. 11.	pag. 52.
Of Judges in the common lawe of Englande, and the maner of triall and pleading there. chap. 12.	pag. 55.
Of the two maner of issues. chap. 13.	pag. 56.
Of the Sheriffe of the shire and of the Court of the Escheker. chap. 14.	pag. 58.
Of the xij. men, chap. 15.	pag. 61.
Of	

The Table.

Of parts of Shires called hundreds, lathes, rapes, wapentakes. chap. 16.	pag. 63.
Of the Court Baron. chap. 17.	pag. 64.
Of the Leete or Laweday. chap. 18.	pag. 66.
Of the proceedings in causes criminall, and first of the Justices of the peace. chap. 19.	pag. 67.
Of hue and crie and recognisance taking vpon them that may giue euidence. chap. 20.	pag. 71.
Of the Coroner. chap. 21.	pag. 72.
Of the Constables. chap. 22.	pag. 74.
Of the sessions of gaole deliuerie, & the definitiue proceedings in causes criminall. chap. 23.	pag. 75.
Certaine orders peculiare to England, touching punishment of malefactors. chap. 24.	pag. 84.
Of treason and the triall which is vsed for the higher Nobilitie and Barons. chap. 25.	pag. 86.

The third booke.

Of that which in other countries is called <i>appellation</i> or <i>pruocation</i> , to amend the iudgement or sentence definitiue, which is thought vniustly giuen in causes criminall. chap. 1.	pag. 87.
What remedie is if the sentence be thought vniustly giuen. chap. 2.	pag. 89.
Of that which in Englande is called <i>appeale</i> , in other places <i>accusation</i> . chap. 3.	pag. 92.
Of the Court of Starrechamber. chap. 4.	pag. 94.
Of the Courts of Wards and Liueries. chap. 5.	pag. 97.
Of Wiues and mariages. chap. 6.	pag. 101.
Of Children. chap. 7.	pag. 106.
Of Bondage and bondmen. chap. 8.	pag. 107.
Of the court which is Spiritual or Ecclesiasticall, and (in the booke of Lawe) Court Christian, or <i>Curia Christianitatis</i> , chap. 9.	pag. 116.

FINIS.

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DE REPVBBLICA ANGLORVM.

*The maner of gouernement or
policie of the REALME of
ENGLANDE.*

Of the diuersities of common
wealthes or gouernement.

CHAP. I.



They that haue wittes
heretofore of Common
wealthes, haue brought
them into threē most sim-
ple and special kindes or
fashions of gouernement.
The first wher one alone
doth gouerne, is called of
the Greeks *Μοναρχία*, the send *Μοναρχία*.

condrd, where the smaller
number, comonly called
of them *Δεικταραπία*, and the thirde wher the multitude
doth rule *Δημοκρατία*. To rule, is vnderstoode to haue the
highest and supreme authozitie of commaundement.
That part or member of the comon wealth is saide to
rule which doth controwle, correct, and direct all other
members of the commonwealth. That part which doth
rule, define and command according to the forme of the
gouernement, is taken in euerie common wealth to be
iust and lawe: As a rule is alway to be vnderstoode to
be straignt, and to which all workes be to be confor-

B

med,

med, and by it to be iudged: I do not meane the Lesbians rule which is conformed to the stome: but the right rule whereby the Artificer and the Architect doe iudge the straightnesse of euerie mans wozke, he to be reckoned to make his wozke perfectest, who goeth nerest to the straightnesse.

What is iust or Lawe in euerie common wealth or gouernement.

CHAP. 2.

Nowe it doth appeare, that it is profitable to euerie common wealth (as it is to euery thing generally and particularly) to be kept in her most perfect estate. Then is that part which doth beare the rule, doe commaund that which is profitable to it, and the commandement of that part which doth rule on that sort, is to be accepted in euery common wealth respectiuely to be iust (as we haue said before): it must needes folow, that the definition which Thrasimachus did make, that to be iust which is the profit of the ruling and most strong part (if it be meant of the Cittie or common wealth) is not so farre out of the way, (if it be ciuillie vnderstoode/ as Plato would make it. But as there is profitable and likelihode of profit, so there is right and likelihode of right. And aswell may the ruling and soueraigne part commaunde that which is not his profit, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe god vnto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he therefore by the lawe is iustly to be condemned, because his doing is contrarie to the lawe and the ordinance of that part which doth commaunde.

Iust.

An.

An other diuision of common wealthes.

CHAP. 3.

But this matter yet taketh an other doubt: for of these maner of rulinges by one, by the fewer part, & by the multitude or greater number, they which haue more methodically & more distinctly & perfectly witten upon them, doe make a subdiuision: and diuiding ech into two, make the one god and iust, and the other evill and vniust: as, where one ruleth, the one they call a king or *Basileus*, the other *tyrannus*, a tyrant: where the fewer number, the one they name a gouerning of the best men *de conceptione*, or *Remp. optimatum*, the other of the usurping of a few Gentlemen, or a few of the richer & stronger or *despotis*, or *Paucorum posse statim*: and where the multitude doth gouerne, the one they call a common wealth by the generall name *republica*, or the rule of the people *democritus*, the other the rule or the usurping of the popular or rascall and viler sort, because they be mo in number *democritus libertatis*.

Example of chaunges in the maner
of Gouernement.

CHAP. 4.

In common wealthes which haue had long continuance, the diuersities of times haue made all these maners of ruling or government to be seene: As in Rome: kinges, Romulus, Numa, Servius, tyranthes, Tarquinius, Sylla, Cæsar: the rule of best men, as in time when the first Consuls were: and the usurping of a few, as of the Senators after the death of Tarquinius, and before the succession of the Tribune, and manifestly in the Decemvirate, but more perniciously in the Triumvirate of Cæsar, Crassus, and Pompeius: and afterwarde in the Triumvirate of Octavius, Antonius, and Lepidus: The common wealth and rule of the people, as in the expul-

Sing of the decemviri and long after, especially after the law was made, either by Horatius, or (as some would haue it) Hortentius, *quod plebs scinerit, id populum teneat*: And the ruling and usurping of the popular and rascal, as a little before Sylla his reigne, & a little before Caius Cæsars reigne. For hys usurping of the rascality can never long indure, but necessarily breedeth, & quickly bringeth forth a tyrant. Of this, hath Athens, Syracuse, Lacedemon and other olde auncient ruling Cities had experience, and a man neede not doubt but that other common wealthes haue followed the same rate. For the nature of man is never to stand stile in one maner of estate, but to grow from the leesse to the more, and decay from the more againe to the leesse, till it come to the fatal end and destruction, with many turnes and turmoyles of sickness & recovering, selbome standing in a perfect health, neither of a mans bodie it selfe, nor of the politike bo-
die which is compact of the same.

Of the question what is right and iust in
commonwealthe common wealth.

CHAP. 5.

So when the common wealth is euill gouerned by an euill ruler and vniust (as in the three last named which be rather a sickenes of the politike body than perfect and good estates) if the lawes be made, as most like they be alwates to maintaine that estate: the question remaineth whether the obedience of them be iust, and the disobedience wrong: the profit and conservuation of that estate right & iustice, or the dissolution: and whether a god and upright man, and louer of his countrie ought to maintaine and obey them, or to seeke by all meanes to abolish the, which great & hautie courages haue often attempted: as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyrants, Brutus and Cassius

Cassius against Cæsar, which hath bin cause of many commotions in common wealthes, whereof the iudgement of the common people is according to the euent and successe of them which be learned, according to the purpose of the doers, & the estate of the time then present. Certaine it is that it is alwayes a doubtfull and halardous matter to meddle with the chaunging of the lawes and gouernement, or to disobey the orders of the rule or gouernment, which a man doth finde alreadie establisched.

That common wealthes or gouernements
are not most commonly simple but mixt.

CHAP. 6.

Now although the gouernements of common wealthes be thus diuided into thre, and cutting ech into two, so into sixe: yet you must not take that ye shall finde any common wealth or gouernement simple, pure and absolute in his sort & kinde, but as wise men hane diuided sovnderstandings sake and fantasied iij. simple bodies which they call elementes, as fire, ayre, water, earth, and in a mans bodie fourre complexions or temperatures, as cholericke, sanguine, phlegmatique, and melancholique: not that ye shall finde the one utterly perfect without mixtion of the other, for that nature almost will not suffer, but vnderstanding doth discerne ech nature as in his sinceritie: so seldome or never shal you finde common wealthes or gouernement which is absolutely and sincerely made of any of them aboue named, but alwayes mired with an other, and hath the name of that which is more and ouerruleth the other alwayes or for the most part.

The definition of a king and of a tyrant.

CHAP. 7.

Rex.

Tyrannus.

Wher one person beareth the rule they define that to be the estate of a king, who by succession or election commeth with the god will of the people to that government, and doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne. A tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes alreadie made at his pleasure, maketh other without the advise and consent of the people, and regardeth not the wealth of his communes but the aduancement of himselfe, his faction, & kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, & the butte or marke wherunto it doth tend and shewe. So as one may be a tyrant by his entrie and getting of the gouernement, & a king in the administration thereof. As a man may thinke of Octavius and peraduenture of Sylla. For they both comming by tiranny and violence to that state, did seeme to trauaile verie much for the better order of the common wealth, howbeit either of them after a diuerse maner. An other may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus: for the empire came to them by succession, but their administration was vtterly tyrannicall, of Nero after five yeares, of Domitian and Commodus very shottly upon their new honour. Some both in the comming to their Empire, and in the butte which they shewe at, be kings, but the maner of their ruling is tyrannicall: as many Emperors after Caesar and Octavius, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or plebiscitum, which Caius Caesar or Octavius obtained, by which al the people

ple of Rome did conferre their power and authozitie unto Caesar Wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cœlo & in terra*) whose successor he pretentheth to be; yet the general Councils make a strife with him, to make the Popes power either *Aristocratian* or at the least *legitimum regnum*, & would faine bidele that *absolutam potestatem*. Some men doe iudge the same of the kings of Fraunce, and certayne Princes of Italie and other places, because they make & abrogate lawes and edits, lay on tributes & impositions of their owne will, or by the priuate Counsell and advise of their friends and fauorites onely, without the consent of the people. The people I call that which the word *populus* doth signifie, the whole body and the thre estates of the common wealth: and they blame Lewes the y. for biring the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyranicall power and gouvernement. He himselfe was wont to glory & say, he had brought the crowne of Fraunce hors de page, as one would say out of Wardship.

Of the absolute King.

CHAP. 8.

Other doe call that kinde of administration which the Greces do call, *καρακεντησις*, not tyrrannie, but the absolute power of a King, which they would pretende that euerie King hath, if he would vse the same. The other they call *βασιλειανη* or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie daungerous, aswell to hym that doth vse it, and much more to the people vpon whom

Dictatorship.

Tyrannis.

whom it is vsed: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and uncontrowled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who woulde not suffer any man to keepe the Dictatorship aboue six monethes, because the Dictators (for that time) had this absolute power, which some Greces named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely & methodically treated of the diuision and natures of common wealthes) maketh this sort of gouernmet to be one kind of kings. But all commeth to one effect: for at the first, all Kings ruled absolutely, as they who were either the heades & most ancient of their families, derived out of their owne bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne chilzen and bondmen as reason was: or else in the rude world amongst barbarous & ignorant people, some one then whom God had endewed with singular wisedome to invent things necessary for the nourishing and defence of the multitude, and to administer justice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie giuen him of the multitude, and of the Gentiles when he was dead & almost when he was yet living, was taken for a God, of others for a Prophet. Such among the Jewes were Moses, Iosua, & the other Judges, as Samuel, &c. Romulus & Numa amongst the Romanes, Lycurgus and Solon & diverse other among the Greces, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Greces is called *tyrannie*, which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, wared insolent & proude, vniusland not regarding the common wealth, committed

committed such actes as were horrible and odious, as killing me without cause, abusing their wiues & daughters, taking and spoylng all mens gods at their pleasures, and were not shephearde as they ought to be, but rather robbers & deuourers of the people, whereof some were conteners of God, as Dionysius, other while they liued like diuils, and would yet be adored & accepted for Gods, as Caius Caligula and Domitian: that kind of administration and maner also, at the first not euil, hath taken the signification & definition of the vice of the abusers, so that now both in Greke, Latine, and English a tyrant is counted he, who is an euill king, & who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right or of the law; because that for the most part they who haue had that absolute power haue beene such.

Of the name king and thadministra-
tion of Englande.

CHAP. 9.

That which we call in one syllable king, in english the
olde english men and the Saxons from whom our
tōgue is deriued to this day calleth in two syllables cy-
ning, which whether it cōmeth of cen or ken which be-
tokeneth to know & vnderstād, or can, which betokeneth
to be able or to haue power, I cannot tell. The parti-
ciple absolute of thone we vse yet, as when we say a cu-
ning man, *Vir prudens aut sciens*: the verbe of thother
as I can do this, *possum hoc facere*. By old and auncient
histories that I haue red, I do not understand that our
nation hath vsed any other generall authoritie in this
realme neither Aristocraticall, nor Democraticall, but
onely the royall and kingly maiestie which at the firſt
was diuided into many and sundrie kinges, each abso-
lutely

C

luteſy

lately reigning in his countrey, not vnder the subiectiō of other, till by fighting thone with thother, the ouer-commied alwaies falling to the augmentation of the vanquier and ouercommer, at the last the realme of england grew into one Monarchie. Neither any one of those kinges, neither he who first had all, tooke any iuwestiture at the hand of the emperoz of Rome or of any other superior or forraigne prince, but helde of God to himselfe, and by his sworde his people and crowne, acknowledging no prince in earth his superior, and so it is kept & holden at this day. Although king John (by the rebellion of the nobilitie aided with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subiectes was the also his enemy and his most greuous torment (as some histories do write) did resigne the crowne to his legate Pandulphus, and tooke it againe from him as from the Pope by faith and homage, and a certain tribute yearly. But that act being neither approued by his people, nor established by act of parliament, was forthwith and euer sithens taken for nothing, either to bind the king, his successors or subiectes.

What is a common wealth, and the
partes thereof.

CHAP. 10.

TO be better vnderstood hereafter, it is necessarie yet to make a third diuision of the common wealth by the partes thereof. A common wealth is called a society or common doing of a multitude of free men collected together and vnit by common accord & couenauntes among themselves, for the conseruation of themselues aswell in peace as in war. For properly an host of men is not called a common wealth but abusively, because they are collected but for a time and for a fact: which done,

Respubūca.

done, ech diuideth himself from others as they were before. And if one man had , as some of the old Romanes had (if it be true that is written) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diuerse villages, yet that were no cōmon wealth: for the bondman hath no communion with his master, the wealth of the Lord is only sought for , and not the profit of the slave or bondman . For as they who write of these thinges haue defined , a bondman or a slave is as it were (saving life & humane reason) but the instrument of his Lord, as the axe, the sawe, the chesyll and gowge is of the carpenter. Truth it is the carpenter looketh diligently to save, correct and amend all these: but it is for his own profit, and in consideration of himselfe, not for the instruments sake. And as these be instruments of the carpenter, so the plow, the cart, the horse, ore or asse, be instrumentes of the husbandman: and though one husbandman had a great number of all those and looked well to them , it made no common wealth nor could not so be called. For the priuate wealth of the husbandman is onely regarded , and there is no mutuall societie or portion, no law or pleading betwéene thone and thothe . And (as he sayth) what reason hath the pot to say to the potter , why madest thou me thus ? or why dost thou break me after thou hast made me? even so is the bondman or slave which is bought for monies: for he is but a reasonable and lyuing instrument the possession of his Lords and maister , reckoned among his gods , not otherwise admitted to the societie ciuill or common wealth , but is part of the possession and gods of his Lorde . Wherefore except there be other orders and administrations amongst the Turkes, if the prince of the Turkes (as it is written of him) doe repute al other his bondmen and slaves (himselfe and his sonnes onely freemen) a man may doubt whether his

administration be to be accounted a common wealth or a kingdome, or rather to be reputed only as one that hath vnder him an infinite nûber of slaves or bondmen among whom there is no right, law nor cōmon wealth compact, but onely the will of the Lord and legnior. Surely none of the olde Grækes would call this fashion of government Remp. or ~~monstred~~ for the reasons which I haue declared before.

The first sort or beginning of an house
or familie called *inuropia*.

C H A P. II.

Then if this be a societie, and consisteth onely of free men, the least part therof must be of two. The naturalest and first coniunction of two toward the making of a further societie of continuance is of the husband & of the wife after a diuerse sort each having care of the familie: the man to get, to trauaile abroad, to defend: the wife, to saue þ which is gotten, to tarrie at home to distribute that which commeth of the husbandes laboz for the nurtriture of the childre and family of them both, and to keepe all at home neat and cleane. So nature hath forged ech part to his office, the man sterne, strong, bould, aduenterous, negligent of his beautie, & spending. The women weake, fearefull, faire, curious of her bewtie, and sauing. Either of them excelling other in wit and wisedome to conduct those thinges which appertaine to their office, and therfore where their wisedome doth excel, threin it is reason that ech shoulde gouerne. And without this societie of man, and woman, the kinde of man could not long endure. And to this societie men are so naturally borne that the prince of all Philosophers in consideration of natures was not afraide to say that a man by nature is rather desirous to fellow himselfe to another and so to live in couple,

couple, than to adherd himselfe with many. Although of all thinges or living creatures a man doth shew himselfe most politike, yet can he not well live without the societie & fellowship ciuil. He that can live alone saith Aristotle is either a wild beast in a mans likenes, or else a god rather than a man. So in the house and familie is the first and most naturall (but private) appearance of one of the best kindes of a common wealth, that is called Aristocracia where a few & the best doe governe, and where not one alwaies: but sometime and in some thing one, & sometime and in some thing another doth beare the rule. Whiche to maintaine for his part God hath giuen to the man great wit, bigger strength, and more courage to compell the woman to obey by reason or force, and to the woman bewtie, faire countenaunce, and swete words to make the man to obey her againe for loue. Thus ech obeyeth and commaundeth other, and they two together rule the house. The house I Domus seu call here the man, the woman, their childdren, their ser-^{familia.} vauntes bonde and free, their cattell, their housholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocracia, but Metaphorice, for it is but an house, and a litle sparke resembling as it were that gouernement.

The first and naturall beginning of a
kingdome in Greeke Babylonia.

CHAP. 12.

But for so much as it is the nature of all thinges to encrease or decrease, this house thus encreasing & multiplying by generation, so that it cannot wel be comprehended in one habitation, and the childdren waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out

Prouining or propagation is when a man layeth a brāch of a Vine or Osier, or any other tree into the ground, so that it taketh roote of it selfe & may liue though it be cut then from the first roote or stock.

Pagus.

Oppidum.

Civitas.

in couples as it were by prouining or propagation. And the childe by mariage beginneth as it were to rōte towards the making of a new stocke, and thereupon an other house or familie. So by this propagation or prouining first of one, and then another, and so from one to another in space of time, of many houses was made a strēte or village, of many strētes and villages ioyned together a citie or borrough. And when many cities, borroughes and villages were by common and mutuall consent for their conseruatiō ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most naturall beginning and source of cities, townes, nations, kingdomes, and of all civill societies. For so long as the great grandfather was aliuue and able to rule, it was vnnaturall for any of his sonnes or offspring to striue with him for the superioritie, or to go about to governe or any wise to dishonour him from whom he had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute and perfect King. For he loued them as his owne childdren and nephewes, cared for them as members of his owne body, prouided for them as one hauing by long time more experiance than any one or all of them. They againe honoured him as their father of whose body they came, obeyed him for his great wisedome and forecast, went to him in doubtfull cases as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe vsed noziture: for eche paine put vpon them, he esteemed as laide vpon himselfe.

The first and naturall beginning of the rule
of a few of the best men called in Greeke *Ἄεστοπατεία*.

CHAP. 13.

But when that great Grandfather was dead, the sonnes of him and brethren among themselves not hauing

hauing that reuerence to any, nor confidence of wisedome in any one of them, nor that trust thone to thother, betwene whome (as many times it fareth with brethren) some strifes and brawlinges had before arisen: To defende themselues yet from them whiche were walsh and strangers, necessarily agrēed among themselues to consult in common, and to beare rule for a time in order, now one, now another: so that no one might beare always the rule, nor any one be neglected. And by this meanes if anie one fayled during his yere or time by ignorance, the next (being either wiser of himselfe, or else by his brothers errore & fault) amended it. And in the meane while, at diuise and most times when urgent necessitie did occurre, they consulted all those heads of families together within themselues, howe to demeane and order their matters, best for the conseruation of themselues, and eche of their families, generally and particularly. Thus a fewe being heads and the chiese of their families, equall in birth and nobilitie, and not much different in riches, governed their owne houses and the descendentes of them particularly, & consulted in common vpon publike causes, agreeing also vpon certaine lawes and orders to be kept amongst them. So the best, chiefeſt and sageſt did rule, and thother part had no cause to ſtrive with them, nor had no cause nor appearance to compare with anie of them, neither for age nor discretion, nor for riches or nobility. The rulers ſought eche to keepe and maintaine their posteritie, as their sonnes and nephewes, and ſuch as ſhoulde ſucceſſe them and carie their names when they were deade, and ſo render them being mortal by nature immortall by their fame and ſuccellion of posteritie: hauing moſt earnest care to maintaine ſtill this their couſinage and common familie as well againſt ſoreine and barbarous nations, which were not of their progenie, tongue, or religion, as againſt

against wilde and sauage beastes. This seemeth the naturall course and beginning or image of that rule of the fewer number, which is called of the Greekes *Aeisopatia* and of the Latines optimatum *respublica*.

The first originall or beginning of the rule of the multitude called *magistris* or *Democratia*.

CHAP. 14.

Now as time bringeth an ende of all thinges, these brethen bring all dead, and their offspring encreasing daily to a great multitude, and the reverence due the old fathers in such and so great number of equals sayling by the reason of the death or doting of the Elders: eche owing their merites of education apart to their fathers and grandfathers, and so many arising and such equalitie among them, it was not possible that they should be content to be gouerned by a fewe. For two things being such as for the which men in societie and league doe most strive, that is honour and profit no man of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the moze part should beare the price away in election of magistrates and rulers. So that either by course or by lot eche man in turne might be received to beare rule and haue his part of the honour, and (if any were) of the profit, which came by administration of the common wealth. For whosoever came of that old great grandfathers race, he accounted him selfe as god of birth as any other. For seruice to the common wealth all or such a number had done it, as they coulde not be accounted few. And if a few would take upon them to vsurpe ouer the rest, the rest conspiring together would sone be masters ouer them, and ruinate them wholly. Whereupon necessarily it came to passe that the common wealth must turne and alter as before from one

to

so a few, so now from a few to many and the most part, ech of these yet willing to saue the politicke bodie, to conserue the authozitie of their nation, to defend them selues against all other, their strife being onely for empire and rule, and who should doe best for the common wealth, wherof they would haue experiance made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Ḡreekes called *Δημοκρατία*: the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

That the common wealth or policie must be according to the nature of the people.

C H A P. 15.

By this processe and discourse it doth appere that the mutations & changes of fashions of gouernement in common wealthes be naturall, & doe not alwaies come of ambitiō or malice: And that according to the nature of the people, so the cōmonwealth is to it fit and proper. And as all these iii. kindes of common wealthes are naturall, so when to ech partie or espece and kinde of the people that is applied which best agreeth like a garmēt to the bodie or shooe to the foote, then the bodie politicke is in quiet, & findeth ease, pleasure and profit. But if a contrarie forme be giuen to a contrary maner of people, as when the shooe is too litle or too great for the foote, it doth hurt and encomber the conuenient use thereof, so the frē people of nature tyrannized or ruled by one against their willes, were he never so good, either faile of corage and were seruile, or never rest vntill they either destroie their king & them that would subdue them, or be destroyed themselues: And againe another sort there is which without being ruled by one Prince but set at

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libertie

libertie cannot tell what they shold doe , but either through inselencie, pride , and idlenes will fall to robbery and all mischiefe, and to scatter and dissolute themselfes , or with foolish ambition and private strife consume one another and bring themselues to nothing. Of both these two we haue historie enough to beare witness, as the Grecches, Romanes, Samnitess, Danes, Vandals, and others. Yet must you not thinke, that all common wealthes , administrations and rulinges began on this sort, by prouining or propagation, as is before written , but many times after a great battle and long war the captaine who led a multitude of people, gathered peraduenture of diuerse nations & languages, liking y place which he hath by force conquered, tarieth there, & beginneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lombardes in Italie, the Frenchmen in Gaule, the Saracins in Spaine and part of Frannce, the Sarons in great Brittaine , which is nowe called Englande : of which when that one and chiefe prince is dead , the nobler sort consult among themselues , and either choose an other head and king, or diuide it into more heads and rulers , so did the Lombardes in Italie , and the Sarons in England, or take at the first a common rule and popular estate, as the Zwilers did in their cantons & do yet at this day, or else admit the rule of a certaine few, excluding the multitude and communaltie , as the Panduans, Veronenses , and Venetians haue accustomed.

The diuision of the partes and persons
of the common wealth.

CHAP. 16.

To make all thinges yet cleare before, as we shal go, there ariseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth

iseth of a multitude of houses & families which make stræts & villages, & the multitude of the strætes & villages make townes, and the multitude of townes the realme, & that fræmen be cōsidered only in this behalfe, as subiects & ci^tzens of the cōmonwealth, & not bondmē who can beare no rule nor iurisdiction ouer fræmen, as they who be taken but as instruments & the gods and possessions of others. In which consideration also we do rei^cht women, as those whom nature hath made to keepe home and to nourish their familie and childzen, and not to medle with matters abroade, nor to beare office in a citie or common wealth no more than chil-
dren and infantes: except it be in such cases as the au-
thoritie is annered to the bloud and progenie, as the
crownē, a dutchie, or an erledome for there the bloud is
respected, not the age nor h^e sexe. Wherby an absolute
Quēens, an absolute Dutches or Countesse, those I call
absolute, which haue the name, not by being maried to
a king, duke, or erle, but by being the true, right & next
successors in the dignitie, and vpon whom by right of
the bloud that title is descended: These I say haue the
same authoritie although they be women or children in
that kingdome, dutchie or erledome, as they shoulde
haue had if they had bin men of full age. For the right
and honour of the bloud, and the quietnes and suertie of
the realme, is more to be considered, than either the ten-
der age as yet impotent to rule, or the sere not accusto-
med (otherwise) to intermeddle with publicke affaires,
being by common intendment vnderstood, that such per-
sonages never doe lacke the counsell of such graue and
discreete men as be able to supplie all other defectes.
This (as I saide) is not enough: But the diuision of
these which be participant of the common wealth is
one way of them that beare office, the other of them
that beare none; the first are called magistrates, the se-
cond priuate men. Another the like was among the

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Romanes

Romanes of Patriij & plebei, thone striuing with tho-
ther a long time, the patricij many yeares excluding the
plebei from bearing rule, vntill at last all magistrates
were made cōmon betwēne thē: yet was there another
diuision of the Romanes into *senatores*, *equites* and
plebs: the Greeks had also *ιερατεῖς* & *αρχοντεῖς*. The French
haue also at this day, les nobles & la populare, or gen-
tīls homes & villaines: we in England diuide our men
commonly into foure sortes, gentlemen, citizens,
yeomen artificers, and labourers. Of gentlemen the
first and chiese are the king, the Prince, Dukes, mar-
quises, earles, vicountes, barrons, and these are called
ρήστης *εργάτης* the nobilitie, and all these are called Lords and
noblemen: next to these be knightes, esquires and sim-
ple gentlemen.

Of the first part of gentlemen of Englande
called *Nobilitas maior*.

CHAP. 17.

Eldest sonnes
of dukes are
not earles by
birth, but
Lordes, and
take their
place aboue
earles, and so
are Earles'
eldest sonnes
in respect of
barrons.

Esquires of
honour or
Lordes.

Dukes, marquises, earles, vicountes, and barrons, etc
ther be created by the prince or come to that honour
by being the eldest sonnes, as highest and next in suc-
cession to their parentes. For the eldest of dukes sonnes
during his fathers life is called an earle, an earles
sonne is called by the name of a vicount, or barron, or
else according as the creation is. The creation I call
the first donation and condition of the honour (giuen by
the prince, for god service done by him and aduancement
that the prince will bestowe vpon him) which
with the title of that honour is commonly (but not al-
wates) giuen to him and to his heires, males onely:
the rest of the sonnes of the nobilitie by the rigour of
the lawe be but esquires, yet in common speche, all
dukes and marquises sonnes, and the eldest sonne of
an earle be called Lordes. The which name common-
ly

ly doeth agree to none of lower degree than Barons, excepting such onely, as be thereunto by some speciall office called. The Barrowny or degree of Lordes doeth aunswere to the dignitie of the Senatores of Rome, and the title of our nobilitie to their patricij: when patricij did betoken Senatores aut Senatorum filios. *Census Senatorius* was in Rome, at diuerse times diuerse, and in Englannde no man is created Barron, except he may dispend of yearly reuenue, one thousand poundes or one thousand markes at the least. Vicounts, Earles, Marquises and Dukes more according to the proportion of the degree and honour, but though by chaunce he or his sonne haue lesse, he keepeþ his degréë: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted to the vpper house in the Parliament, although they keepe the name of Lorde still.

Of the second sort of Gentleman which may be called *Nobilitas minor*, and first of Knights.

C H A P. 18.

No man is a Knight by succession, not the King or prince. And the name of prince in England betokeneth the kinges eldest sonne or prince of Wales: although the King himselfe, his eldest sonne, and all Dukes be called by generall name Princes. But as in Fraunce the Kinges eldest sonne hath the title of the Dauphynie, and he or the next heire apparant to the Crowne is Monsire, so in England the Kings eldest sonne is called the Prince. Knights therefore be not borne but made, either before the battle to encourage them the more to aduenture their liues, or after the conflict, as aduaancement for their hardinesse and manhood alreadie shewed: or out of the warre

for some great service done, or some good hope through the vertues which doe appear in them. And they are made either by the king himselfe, or by his commission and royall authoritie, given for the same purpose, or by his lieutenaunt in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to aunswere in part to that which the Romanes called *Equites Romanos*, differing in some pointes, and agreeing in other, as their common wealth and ours do differ and agree: for never in all pointes one common wealth doeth agree with an other, no nor long time any one common wealth with it selfe. For al chaungeth continually to more or lesse, and still to diverse & diuerse orders, as the diuersitie of times do p[re]sent occasion, and the mutabilitie of mens wittes doeth inuent and assay newe wayes, to resorme and amende that wherein they doe finde fault. *Equites Romani* were chose *n ex censu*, is according to their substance and riches. So be Knights in England most commonly, according to the yearlye revenue of their landes being able to maintaine that estate: yet all they that had *Equestrem censum, non legebantur equites*. No more are all made Knights in Englande that may dispense a knightes land or fee, but they onely whom the king wil so honour. The number of *Equites* was vncertainte, and so it is of knightes, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knights of England haue not so, but finde their owne horse themselves in peace time, and most vsually in warres.

Census equester was among the Romanes at diuerse times of diuerse value: but in Englande whosoever may dispense of his free landes 40. l. sterling of yearlye revenue by an olde Law of Englande either at the coronation of the king, or mariage of his daughter, or at the dubbing of the Prince, Knight, or some such great occasion, may be by the King compelled to take that

that order & honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes are not thought worthy of that honour and yet haue abilitie, neither be made Knights though they would, and yet pay the fine. xl. l. Sterling, at that time when this order began, maketh now Cxx. l. of currant money of England: as I haue moze at large declared in my booke of the diversitie of standarde or the valor of monies.

When the Romanes did write *Senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contained *equites* and *plebem*: so when we in England doe say the Lordes and the commons, the Knights, Esquires, & other gentlemen, with citizens, burgesses & yeomen be accounted to make the commons. In ordaining of lawes the Senate of Lordes of England is one house, where the Archbischoppes and Bishops also be, and the King or Queene for the time being as chiefe: the Knights and all the rest of the gentlemen, citizens & burgesses which be admitted to consult vpon the greatest affaires of the Realme be in an other house by themselues, and that is called the house of the commons, as we shal moze clearlye describe whā we speake of the Parliament. Whereupon this word knight is derived, and whether it doe betoken no moze but that which *miles* doth in latine, which is a souldier, might be moned as a question. The word souldier now seemeth rather to come of sould and paiment, and more to betoken a waged or hyred man to fight than otherwile, yet Cæsar in his Commentaries called soldures in the tongue gallois, men who deuoted & swoze themselues in a certaine band or othe one to another and to the captaine, which order if the Almains did followe, it may be that they who were not hyred but being of the nation, vpon their owne charges and for their ad-

Verè Lantz-
knecht,lan-
cearius:a
spearman.

Eques aura-
tus.

Sire quā Se-
nior.

uauncement, and by such common oþ or band that did followe the warres, were (possibly) ^{verè lantz} called knightes oþ milites, and nowe among the Almaines some are called lanceknightes as souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peraduenture it may be that they which were next about the prince as his garde or seruauntes picked or chosen men out of the rest being called in the Almaine language, knighten, which is asmuch to say as seruantes: these men being sound of god seruice, the word afterward was taken for an honoꝝ, and for him who maketh possession of armes. Our language is so chaunged that I dare make no iudgement therof. Now we call him Knight in English that the French calleth cheualier, and the latine equitem oþ equeſtris ordinis.

And when any man is made a Knight, he kneeling downe is stroken of the Prince, with his ſword naked upon the backe oþ shoulder, the Prince ſaying: ſus oþ ſois cheualier au nom de Dieu and (in times past) they added S. George, and at his arifing the Prince ſaith, auauencer. This is the manner of dubbing of Knights at this preſent: and that terme dubbing was the olde terme in this point, and not creation. At the coronaſion of a King oþ Queene, there be Knights of the bath made with long and moze curious ceremonies: But howſoener one be dubbed oþ made a knight, his wife is by and by called a Ladie as well as a Barons wife: he himſelfe is not called Lord, but hath to his name in common appellation added this ſyllable, Sir, as if he before were named, Thomas, William, John, oþ Richard, afterward he is alwayes called Sir Thomas, Sir William, Sir John, Sir Richard, and that is the title which men gine to Knightes in Englande. This may ſuffice at this time, to declare the order of knight-hode, yet there is an other order of Knights in England which be called the Knights of the Garter. King Edward

Edward the third, after he had obtained manie notable victories, King Iohn of Fraulice, King Iames of Scot-
lande, being both prisoners in the tower of London at
one time, and king Henrie of Castel the bastard expul-
sed out of his realme, and Don Petro restozed vnto it
by the prince of Wales and Duke of Aquitaine called
the blacke prince, inuented a societie of honour, and
made a choise out of his owne realme and dominions,
and all Christendom: and the best and most excellent re-
nowned persons in vertues and honour, he did adorne
with that title to be knightes of his order, gaue them a
garter decked with golde, pearle and precious stones,
With the buckle of gold, to weare daily on the left legge
only, a kirtle, gowne, cloke, chaperon, collar, and other
august and magnificall apparel both of stoffe and fa-
shion exquiste & heroicall, to weare at high feastes, as
to so high and princely an order was meete: of which
order he and his successors Kinges and Queenes of
England to be the soueraigne, and the rest by certaine
statutes and lawes among themselves, be taken as
brethren and fellowes in that order, to the number of
xxvi. But because this is rather an ornament of the
realme than any policie or gouernment therof, I leaue
to speake any further of it.

Of Esquiers.

C H A P. 19.

Escuier or esquier (which we call commonly squire)
is a French worde, and betokeneth *Scutigerum* or
Armigerum, and be all those which beare armes (as we
call them) or armories (as they terme them in French)
which to beare is a testimonie of the nobilitie or race
from whence they doe come. These be taken for no di-
stinct order of the common wealth, but do goe with the
residue of the gentlemen: saue that (as I take it)
C they

they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or else they were at the first cosserels or the bearers of the armes of Lordes or Knightes, and by that had their name for a dignitie and honour giuen to distinguish them from a common scouldier called in latine *Gregarius miles*.

Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their bloud and race doth make noble and knownen, *Euareis* in Greeke, the Lataines call them all *Nobiles*, as the French Nobles, *Euareis* or *Nobilitas* in Latine is defined, honour or title giuen, for that the auncestors hath bin notable in riches or vertues, or (in fewer wordes) olde riches or prowes remaining in one stock. Which if the successors do keepe and followe, they be verè *nobiles* and *Euareis*: if they doe not, yet the fame and wealth of their auncestors serue to couer the so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologie of the name serueth the efficacie of the worde. *Gens* in Latine betokeneth the race and surname, so the Romaines had Cornelios, Sergios, Appios, Fabios, Aemilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the memorie of the glorie of their progenitors fame, were gentlemē of that or that race. This matter made a great strife among the Romanes, when those which were *Noni homines* were more allowed, for their vertues new and newly shewen, than the olde sinell of auntient race newly defaced by the cowardise and euill life of their nephewes and discendauntes could make the other to be, Thus the Cicerones, Catones, and Marij had

had much adoe with those auncients, and therfore said
Iuuenalis:

Malo pater tibi sit Thersites, dummodo tu sis
Aeacidi similis vulcaniaque arma capessas,
Quam te Thersiti similem producat Achilles.

But as other common wealthes were faine to doe,
so must all princes necessarilie folloue, that is, where
vertue is to honour it: and although vertue of auncient
race be easier to be obtained, aswell by the example of
the progenitors, which encourageth, as also throught
habilitie of education and bringing vp, which enableth,
and the lastly enraced loue of tenants & neibors to such
noblemen and gentlemen, of whom they holde and by
whom they doe dwell, which pricketh forward to ensue
in their fathers steps. So if all this doe faile (as it
were great pitie it shold) yet such is the nature of
all humaine shinges, and so the world is subiect to mu-
tability, that it doth many times faile: but whē it doth,
the prince and common wealth haue the same power
that their predecessors had, and as the husbandmā hath
to plant a new tree where the olde fayleth, so hath the
prince to honour vertue where he doth find it, to make
gentlemen, esquiers, knights, barons, earles, marqui-
ses, & dukes, where he feeth vertue able to beare that
honour or merits, and deserues it, & so it hath always
bin vised among vs. But ordinarily the king doth on-
ly make knights and create barons or higher degrēes:
for as for gentlemen, they be made god cheape in Eng-
land. For whosoeuer studieth the lawes of the realme,
who studieth in the vniuersities, who professeth libe-
rall sciences, and to be short, who can liue idly and
without manuall labour, and will beare the port,
charge and countenaunce of a gentleman, he shall be
called master, for that is the title which men giue to
esquiers and other gentlemen, and shall be taken for a
gentleman: for true it is with vs as is saide, *Tanti eris*

alij quantitibi feceris: (and if neede be) a king of Heraulds shal also giue him for mony, armes newly made and inuented, the title whereof shall pretende to haue bene found by the sayd Herauld in perusing and viewing of olde registers, where his auncestors in times past had bin recorded to beare the same: & if he wil do it more truely and of better faith, he will write that for the merites of that man, and certaine qualites which he doth see in him, and for sondrie noble actes which he hath perfourmed, he by the authozitie which he hath as king of Heraldes & armes, giueth to him and his heires these and these armes, which being done I thinke he may be called a squire, for he beareth euer after those armes. Such men are called sometime in scorne gentlemen of the first head.

Whether the maner of England in making gentlemen so easily is to be allowed.

CHAP. 21.

A man may make doubt & question whether this maner of making gentlemen is to be allowed or no, & for my part I am of that opinion y it is not amisse. For first the prince loseth nothing by it, as he shoulde doe if it were as in France: for the yeomen or husbandmā is no more subiect to faile or fare in Englande than the gentleman: no, in euerie payment to the king the gentleman is more charged, which he beareth the gladdier and dareth not gaineslaie for to saue and keepe his honour and reputation. In any shew or muster or other particular charge of the towne where he is, he must open his purse wider and augment his portion aboue others, or else he doth diminish his reputation. As for their outward shew, a gentleman (if he wil be so accompted) must go like a gentleman, a yeoman like a yeoman, and a rascall like a rascall; and if hee be called to

the

the warres, he must and will (whatsoeuer it cost him) array himselfe and arme him according to the vocation which he pretendeth: he must shewe also a more manly courage & tokens of better education, higher stomacke and bountifuller liberalitie than others, and keepe about him idle seruautes, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the common wealth, it is not those that haue to do with it, which will magnifie them selues, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knownen, as shall be declared hereafter.

Of Citizens and Burgeses.

C H A P. 22.

NEY to gentlemen, be appointed citizens and burgeses, such as not onely be freé and received as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgeses, be to serue the common wealth, in their cities & burrowes, or in corporat townes where they dwell. Generallly in the Shires they bee of none account, save onely in the common assembly of the Realmie to make lawes, which is called the Parliament. The auncient Cities appoint *iiiij.* and ech borough *ij.* to haue voices in it, and to give their consent or dissent in the name of the citie or borough for which they be appointed.

Of Yeomen.

C H A P. 23.

THose whom we call yeomen next vnto the nobilitie, Knights and Squires, haue the greatest charge and doings

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doings in the common wealth, or rather are more tra-
uailed to serue in it than all the rest : as shall appeare
hereafter. I call him a yeoman whom our Lawes doe
call *Legalem hominem*, a wozde familiar in wittes and
enquestes, which is a freeman beynge English, and may
dispend of his owne fre lande in verely revenue to the
summe of xl. s. Sterling : This maketh (if the iust va-
lue were taken now to the proportion of monies) vi. l.
of our currant mony at this present. This sort of peo-
ple confesse themselues to be no gentlemen, but giue
the honour to al which be or take vpon them to be gen-
tlemen, and yet they haue a certaine preheminence and
more estimation than laborers and artificers, and com-
monly liue wealthily, keepe good houses, & do their busi-
nesse, & trauaile to acquire riches: these be (for the most
part) seruantes vnto gentlemen, which with grasing, fre-
quenting of markettes, and keepeing seruaunts not i-
idle as the gentleman doth, but such as get both their
owne liuing and parte of their maisters : by these
meanes doe come to such wealth, that they are able
and daily doe buy the landes of unchristie gentlemen,
and after setting their sonnes to the schoole at the Uni-
versities, to the lawe of the Realme, or otherwise lea-
ving them sufficient landes whereon they may liue
without labour, doe make their saide sonnes by those
meanes gentlemen. These be not called masters, for
that (as I saide) pertaineth to gentlemen onely: But
to their surnames, men adde godman: as if the sur-
name be Luter, Finch, White, Browne, they are
called, godman Luter, godman White, godman
Finch, godman Browne, amongst their neighbours,
I meane not in matters of importance or in lawe. But
in matters of Lawe and for distinction, if one were a
knight they would write him (for example sake) Sir
John Finch Knight, so if he be an Esquier, John Finch
Esquier or Gentleman, if he be no Gentleman, John
Finch

Finch yeoman. For amongst the Gentlemen they which claime no higher degré, and yet be to be exempted out of the number of the lowest sort thereof, be written Esquiers. So amongst the husbandmen labourers, lowest and rascall sort of the people such as be exempted out of the number of the rascabilitie of the popular be called and written yeomen, as in the degré next vnto gentlemen. These are they which olde Cato calleth *Aratores* and *optimos ciues in Republica*: and such as of whom the writers of common wealths praise to haue manie in it. Aristotleles namely reciteth *noꝝa p̄-minadēsa*: these tende their owne busynesse, come not to meddle in publike matters and iudgements but when they are called, and glad when they are deliverner thereof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labour as men vsed to it, yet wishing it soone at an ende that they might come home & live of their owne. When they are forþ they fight for their Lordes of whom they hold their landes, for their wifes and children, for their countrey and nation, for praise and honour, against they come home, and to haue the loue of their Lordes and his children to be continued towardes them and their children, which haue aduentured their lives to and with him and his. These are they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so harde to endure paine, so couragious to aduenture with their Lordes or Captaine going with, or before them, for else they be not hastie nor neuer were, as making no profession of knowledge of warre. These were the god arathers in times past, and the stable troupe of footemen that affraide all France, that would rather die all, than once abandon the knight or gentleman their captaine,

who at those daies commonly was their Lorde, and whose tenuantes they were, readie (besides perpetuall shame) to be in danger of vndoing of themselues, & all theirs if they should shewe any signe of cowardise or abandon the Lorde, Knight or Gentlemen of whom they helde their living. And this they haue amongst them from their forefathers tolde one to an other. The gentlemen of Fraunce and the yeomen of England are renowned, because in battle of horsemen Fraunce was many times too god for vs, as we againe alway for them on fote. And Gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on fote: howsoeuer it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their capaines were eyther a fote or vpon a litle nagge with them, and the Kinges of Englande in foughten battles remaining alwaies among the fote men, as the Frenche Kinges among their horsemen. Eche Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I haue declared, but from whence the word is derived it is hard to say: it cannot be thought that yeomen should be said a young man, for commonlie we doe not call any a yeoman till he be married, and haue childdren, and as it were haue some authozitie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possible our yeomen not being so bolde as to name themselues gentlemen, when they came home, were content when they had heard by frequentation with lowe dutchmen of some small gentleman (but yet that would be counted so) to be called amongest them, yonker man, the calling so in warres by mockage or in sport thone an other, when they come home, yonker man, and so yeoman: which word nowe signifieth among vs, a man well at ease and hauing honestlie to liue, and yet not a gentleman; whatsoeuer

Geman in the
Saxon is a
maried man,
and hereof
commeth our
yeoman, for
after mariage
men are ac-
counted set-
led members
in the cōmon
wealth, but
not before.
A yonker
commeth of
young herre
which is a son
and heire to a
gentleman or
a young
gentleman.

uer that worde yonker man, yonke man, or yeoman
doth moze or lesse signifie to the dutch men.

Of the fourth sort of men which
doe not rule.

CHAP. 24.

The fourth sort or classe amongest vs, is of those
which the olde Romans called *capite censij proletarii*
or *opera*, day labourers, poore husbandmen, yea mar-
chantes or retailers which haue no frē lande, copi-
holders, and all artificers, as Taylers, Shomakers,
Carpenters, Brickmakers, Bricklayers, Masons, &c.
These haue no voice nor authozitie in our common
wealth, and no account is made of them but onelie to
be ruled, not to rule other, and yet they be not altoge-
ther neglected. For in cities and corporate townes for
default of yeomen, enquests and Juries are impaneled
of such manner of people. And in villages they be com-
monly made Churchwardens, alecunners, and manie
times Constables, which office toucheth more the com-
mon wealth, and at the first was not employed vpon
such lowe and base persons. Wherefore generally to
speake of the common wealth, or policie of Englande,
it is governed, administred, & manured by thre sortes
of persons, the Prince, Monarch, and head gouerner,
which is called the King, or if the crowne fall to a wo-
man, the Queene absolute, as I haue heerefoore saide:
In whose name and by whose authozitie all things are
administred. The gentlemen, which be diuided into
two partes, the Baronie or estate of Lordes conney-
ning barons and all that be aboue the degree of a ba-
ron, (as I haue declared before); and those which be
no Lordes, as Knightes, Esquires, and simply gentle-
men. The thirde and last sort of persons is named

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the yeomanrie: each of these hath his part and administration in iudgementes, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter.

THE SECOND booke.

Of the Parliament and the authoritie thereof.

CHAP. I.



He most high and absolute power of the realme of Englande, consisteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie are, is þ force and power of Englande: so in peace & consultation where the Prince is to giue lise, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knighthes, esquiers, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie be present to aduertise, consult and shew what is god and necessarie for the common wealth, and to consult togerher, and vpon mature deliberation euerie bill or lawe being thrise reade and disputed vpon in either house,

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the other two partes first each a part, and after the Prince himselfe in presence of both the parties doeth consent vnto and alloweth. That is the Princes and Whole realmes deede: wherupon iustlie no man can complaine, but must accommodate himselfe to finde it god and obey it.

That which is done by this consent is called firme, stable, and *sancuum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giueth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legitimateth bastards, establisheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtful rightes, whereof is no lawe alreadie made, appoin-
teth subsidies, tailes, taxes, and impositions, giueth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absol-
ueth them whom the Prince will put to that tryall:
And to be shoxt, all that euer the people of Rome might
do either in *Centuriatis comitijs* or *tributis*, the same may
be done by the parliament of Englande, which repres-
enteth & hath the power of the whole realme both the
head and the bodie. For euerie Englishman is enten-
ded to be there present, either in person or by procu-
ration and attornies, of what preheminence, state,
dignitie, or qualitie soever he be, from the Prince (be
he King or Queene) to the lowest person of Englande.
And the consent of the Parliament is taken to be eue-
rie mans consent.

Alias Tribu-
nicijs.

The forme of holding the Parliament.

CHAP. 2.

The Prince sendeth forth his rescripts or writtes to
every duke, marques, baron, and every other Lorde

F 2 tempo.

temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least soxtie dayes): he sendeth also writtes to the Sherifcs of euery shire to admonish the whole shire to chese two knightes of the parliament in the name of the shire, to heare and reason, and to give their advise and consent in the name of the shire, and to be present at that day: likewise to every citie and towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, present at the day assigned for the election: the voice of any absent can be counted for none. Peouen I call here (as before) that may dispende at the least xl. s. of yearlye rent of free lande of his owne. These meeting at one day, the two who haue the more of their voices be chosen knightes of the shyre for that parliament: likewise by the pluralitie of the voices of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do mecte in the higher house, where after prayers made, they that be present are written, and they that be absent vpon sicknes or some other reasonable cause (which the prince will allowe) doe constitute vnder their hande and seale some one of those who be present as their procurer or attorney to give voice for them, so that by presence or attorney and proxy they be all there, all the princes and barrons and all archbischops and bishops, and (when abbots were) so manie abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal throne as appertaineth to a king, set in the middest of the higher place thereof. Next vnder the prince sitteth the Chancelloz, who is the voice and
Dxator

Orator of the Prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the middest thereof vpon woolsackes sitteth the Judges of the realme, the master of the roules, and the secretaries of estate. But these that sit on the woolsackes haue no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell whereof they haue the custodie and knowledge: and this is calld the vpper house, whose consent and dissent is giuen by ech man severally and by himselfe, first for himselfe, and then severally for so many as he hath letters and proxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane tyme the knights of the shires and burgesses of the parliament (for so they are called that haue voice in parliamēt, and are thosen as I haue said before, to the number betwixt iij. C. and iiiij. C.) are called by such as it please the Prince to appoint, into an other great house or chamber by name, to which they aunswere; and declaring for what shyre or towne they aunswere, then they are willed to choose an able & discrete man to be as it were the mouth of them all, & to speake for and in the name of them, and to present him so chosen by them to the Prince: which done they comming al with him to a barre, which is at the nether end of the vpper house, there he first praiseth the prince, then maketh his excuse of vnaibilitie, and prayeth the prince that he would command the commotheis to choose another. The Chancelloz in the princes name doeth so much declare him able, as he did declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willeth them to goe and consult of lawes for the comon wealth. Then the spea-

ker maketh certaine requests to the prince in the name of the commons, first that his maiestie would be content that they may vse and enjoy all their liberties and priuiledges that the common house was wont to enjoy. Secondly that they might frankly and freely say their minds in disputing of such matters as may come in question, and that without offence to his Maiestie. Thirldly that if any shoulde chaunce of that lower house to offend or not to do or say as shoulde become him, or if any shoulde offend any of them being called to that his highnes court: That they the selues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to haue thadnise or conference with his Maiestie or with any of the Lordes, that they might doe it: All which hee promiseth in the commons names that they shal not abuse, but haue such regarde as most faithfull, true and louing subiectes ought to haue to their prince.

The Chaunceloz answereth in the princes name, as apperteyneth. And this is all that is done for one day, & sometime two. Besides the Chaunceloz, there is one in the vpper house who is called Clarke of the Parliament, who readeth the bils. For all that commeth in consultation either in the vpper house or in the neather house, is put in wxitting first in paper, which being once read, he that will, riseth vp and speaketh with it or against it; and so one after another so long as they shal thinke good. That done they goe to another, and so another bill. After it hath bin once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendment in wordes and peraduenture some sentences as by disputation seemeth to be amended: In the vpper house the Chaunceloz asketh if they will haue it engrossed, that is to say put into parchment; which done, and read the third time, and that estlones

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if any be disposed to object disputed againe among them, the Chauncelor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath beene thrise read here in this house, are ye content that it be enacted or no? If the not contentes be moe, then the bill is dashed, that is to say the lawe is annihilated and goeth no farther. If the contentes be the more, then the Clarke writeth vnderneath: Soit baillé aux commons. And so when they see time they send such bills as they haue approued by two or thre of those which doe sit on the woolsacks to the commons: who asking licence, and comming into the house, with due reuerence, saith to the speaker: Master speaker, my Lordes of the vpper house haue passed among them and thinke god, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or actes. They pray you to consider of them, and shew them your advise, which done they goe their way. They being gone and the doore againe shut, the speaker rehearseth to the house what they sayde. And if they be not busie disputing at that time in an other bill, he asketh them streightway if they will haue that bill or (if there be moe) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent down from the Lordes. For in that point ech house hath equall authoritie, to propounde what they thinkie meete, either for thabrogating of some lawe made before, or for making of a newe. All bills be thrise in thre diuerse dayes read and disputed vpon, before they come to the question. In the disputing is a maruelous god or order vsed in the lower house. He that standeth vp

bareheaded is vnderstended that hee will speake to the bill. If moe stande vpp, who that first is iudged to arise, is first heard, though the one doe prayse the law, the other dissuade it, yet there is no alteration. For euerie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speakekth with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetuall Dration not with alteration, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would chaunge his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with alteration would spende all the time. The next day he may, but then also but once.

No reviling or nipping wordes must be vsed. For then all the house will crie, it is against the order: and if any speake vnreuerentlie or seditiouslie against the Prince or the priuie Counsell, I haue seene them not onely interrupted, but it hath beeene moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Neuerthelesse with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes and hasting of time. At the afternone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or dissuade it. But when any bill is read, the speakers office is as brieslie and as plainly as he may to declare the effect thereof to the house. If the commons doe assent to such billes as be sent to them first agreed

agreed vpon from the Lordes thus subscribed, Les commons ont assentus, so if the Lordes doe agrē to such billes as be first agrēd vpon by the Commons, they sende them downe to the speaker thus subscribed, Les Seigneurs ont assentus. If they cannot agrē, the two houses (soz euerie bill from whence soever it doth come is thise reade in each of the houses) if it be vnderstoode that there is anie sticking, sometimes the Lordes to the Commons, sometime the Commons to the Lordes doe require that a certaine of each house may mee together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeeting for the most part not alwaies either part agrēs to others billes.

In the vpper house they give their assent and dissent ech man severally and by himselfe first soz himselfe, and then soz so many as he hath prorie. When the Chaunceller hath demanded of them whether they will goe to the question after the bill hath bēne thise reade, they saying onely content or not content, without further reasoning or replying: and as the moze number doeth agrē, so it is agrēed on, or dashed.

In the neather house none of them that is elected either Knight or Burges can give his voice to an other nor his consent nor dissent by prorie. The moze part of them that be present onely maketh the consent or dissent. After the bill hath bēne twise reade, and then engrossed and estlones reade and disputed on ymough as is thought: the speaker asketh if they will goe to the question. And if they agrē he holdeth the bill vp in his hande and sayeth, as manie as will haue this bill goe soz warde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they diuide the house, the spea-

ker saying, as many as doe allowe the bill goe downe with the bill, and as many as do not sitte still. So they diuide themselves, and being so diuided they are numbered who make the moze part, and so the bill doeth spedde. It chaunceh sometime that some part of the bill is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe soz warde. Then they chuse certaine committees of them who haue spoken with the bil & against it to amende it, and bring it in againe so amended, as they amongest them shall thinke meete: and this is before it is engrossed, yea & some time after. But y^e agreement of these committees is no preuidice to the house. For at the last question they will either accept it or dash it as it shall seeme god, notwithstanding y^e what soever the committees haue done.

Thus no bill is an act of Parliament, ordinaunce, or edict of law, vntill both the houses severally haue agreed vnto it, after the order aforesaide, no nor then neither. But the last day of that parliament or session the Prince commeth in person in his parliament robes, and sitteth in his state: all the upper house sitteth about the Prince in their states and order in their robes. The Speaker with all the common house commeth to the barre, and there after thankesgiuen first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the god^e governement of his people, and for calling them together to advise of such thinges as shoulde be for the reformation, establishing & ornament of the common wealth: the Chaunceller in y^e Princes name giueth thankes to the Lordes & commons for their paines and traualles taken, which he saith the Prince wil remember and recompence when time and occasion shall serue, & that he for his part is ready to declare his pleasure concerning their procedinges, whereby the same may

may haue perfect life & accomplishment by his princelie authoritie, and so haue the whole consent of the Realme. Then one readeſ the title of euerie act which hath paſſed at that ſeſſion, but only in this fashion: An act concerning ſuſh a thing &c. It is marked there what the Prince doth allowe, and to ſuſh he ſayth; Le roy ou la royne le veult. And thofe be taken nowe as perfect lawes and ordinances of the Realme of Englande and none other, and as ſhortlie as may be put in print, except it be ſome private cauſe ou lawe made for the beſt ou preiudice of ſome private man, which the Ro-mans were wont to call *privilegia*. Theſe be onely exemplified vnder the ſeale of the Parliament, and for the moſt part not printed. To thofe which the Prince li-keſt not, he anſwereth, Le roy ou la royne ſaduifera, and thofe be accounted utterly daſhed and of no effect.

This is the order and forme of the highest and moſt authenticall court of Englande, by vertue whereof all thofe thinges be eſtabliſhed whereof I ſpake beſore, and no other meaneſ accounted vailable to make any newe ſoſtaiture of life, member, ou landes of anie English man, where there was no lawe ordayneſ for it be-ſore. Nowe let vs ſpeak of the ſaide partes when they be ſeuerall.

Of the Monarch King or Queene of Englande.

CHAP. 3.

The Prince whom I nowe call (as I haue often be-ſore) the Monarch of Englande, King ou Queene, hath abſoluteſ in his power the authoritie of warre and peace, to deſire what Prince it ſhall please him, and to bid him warre, and againe to reconcile himſelfe and enter into league ou truce with him at his pleasure ou

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44 *De Republica*

the aduice onely of his priuie counsell. His priuie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knightes, and Esquiers, such and so manie as he shall thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to give therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them, as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeþ so many ambassades and letters sent vnto him secrete as he will, although these haue a particular oþ of a counceller touching faith and secrets administered vnto them when they be first admitted into that companie. To that heerein the kingdome of Englande is farre more absolute than either the dukedom of Venice is, or the kingdom of the Lacedemonians was. In warre time, & in the field the Prince hath also absolute power, so that his woorde is a lawe, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath beeþ sometime vþed within the Realme before any open warre in sudden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessitie, especiallie, when by anie meanes the punishment might haue beeþ done by oþer of lawe. This absolute power is called marciall lawe, and euer was and necessarilie must be vþed in all camps and hostes of men, where the time noþ place doe suffer the farriance of pleading and processe, be it never so shorþ, and the important necessitie requireth spedie execution, that with more alwe the souldier might be kept in more strait obedience, without which never captaine can doe anie thing daileable in the warres.

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The prince vseth also absolute power in cryng and decreeing the money of the realme by his proclamation onely. The mony is alwaies stamped with the princes image and title. The forme, fashyon, maner, weight, finenesse, and basenesse therof, is at the discretion of the Prince. For whom shold the people trust more in that matter than their prince, seeing the coine is only to certifie the goodnesse of the metall and the weight, whiche is affirmed by the Princes image and marke? But if the prince will deceiue them and giue them copper for siluer or golde, or enhaunce his coyne more than it is worth, he is deceiued himselfe, aswell as he doth goe about to deceiue his subiects. For in the same soþ they pay the Prince his rentes and customes. And in time they will make him pay rateably or more for meate, drinke and virtualles for him and his, and for their labour: which experiance doeth teach vs nowe in our dayes to be done in all regions. For there euer hath bee, & euer wil be a certaine proportiō betwene the scarcitie and plentie of other thinges, with gold and siluer, as I haue declared more at large in my booke of monie. For all other measures and weightes, aswell of drie thinges as of wet, they haue accustomed to be established or altered by the Parliament, and not by the princes proclamation onely.

The prince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of Lawes, where the payne of the lawe is applyed onely to the Prince. But where the forfaite (as in popular actions it chaunceth many times) is part to the Prince, the other part to the declarator, detectoꝝ or informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the Princes suite) the Prince giueth absolution or pardon: yet with a clause, *modo sive rectus*

rectus in curia, that is to say, that no man obiect against the offendour. Whereby notwithstanding that he hath the princes pardon if the person offended will take vpon him the accusation (which in our language is called the appaale) in cases where it lieth, the princes pardon doth not serue the offendour.

The prince giueth all the chiese and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first fruities of all Ecclesiasticall promotions, except in the Universities and certaine Colledges whiche be exempt.

All writtes, executions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subiectes are the kinges onely, that is to say no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutation of man, be called pleas of the crowne, nor can be done in the name of any inferiour person than he or shee that holdeth the crowne of Englande. And likewise no man can glue pardon thereof but the prince onely: Although in times past there were certaine Countis Palatines, as Chester, Durham, Elie, which were hault iustices, and writtes went in their name, and also some Lorde marchers of Wales, which claymed like priuiledge. All these are nowe worne away. The supreme iustice is done in the kinges name, and by his authozitie onely.

The Prince hath the wardschippe and first mariage of all those that hold landes of him in chiese. And also the gouernement of all soles naturall, or such as be made by aduenture of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconvenience hath bene thought to grow thereof, & sith that time it hath bene thought very

verie unreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of Hercules hand. And being gouerned iustly & rightly, I see not so much inconuenience in it, as some men would make of it; diuise other rights and preheminences the prince hath which be called prerogatives royals, or the prerogative of the king, which be declared particularly in the booke of the common lawes of England.

To be short the prince is the life, the head, and the authozitie of all thinges that be done in the realme of England. And to no prince is done more hono: and reverence than to the King and Ducene of Englande, no man speaketh to the prince nor serueth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare farrie there but bareheaded. This is vnderstode of the subiects of the realme: Soz all strangers be suffered there and in all places to vse the maner of their countrie, such is the civilitie of our nation.

The chiefe pointes wherein one common wealth doth differ from another.

C H A P. 4.

Now that we haue spoken of the parliament (which is the whole vniuersall and generall consent and authozitie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and body of the realme of England) and also of the prince, (which is the head, life and gouernor of this common wealth): there remaineth to shewe, howe this head doeth distribute his authozitie and power to the rest of the members for the gouernment of his realme, & the common wealth of the politike bodie of Englande. And where-

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as all common wealthes and gouernementes be most occupied, and be most diverse in the fashion of thre thinges: in making of Lawes and ordinances, for their owne gouernement: in making of battel & peace, or truce with forraigne nations: in prouiding of mony for the maintenance of themselues, within themselues, & defence of themselues against their enemies: in chosing and election of the chiefe officers and magistrates: and fiftly in the administration of justice. The first and third we haue shewed is done by the prince in Parliament. The second and fourth by the Prince himselfe. The fift remaineth to be declared.

Of the three maners and formes of trialles
or iudgements in England.

C H A P. 5.

By order and vsage of Englande there is thre wayes and maners, whereby absolute and definite iudgement is giuen, by parliament which is the highest and most absolute, by battle and by the great assise.

Triall or iudgement by parliament.

C H A P. 6.

The maner of giuing iudgement by parliament betwene priuate and priuate man, or betwene the Prince and any priuate man, be it in matters criminall or ciuill, for land or for heritage doth not differ frō thorder which I haue prescribed, but it procedeth by bill thrise read in ech house and assented to as I haue saide before, and at the last day confirmed and allowed by the Prince. Howbeit such bills be seldom receaved, because that great counsell being enough occupied with the publike affaires of the realme, will not gladly intermedle it selfe with priuate quarels & questions.

Triall

Triall of iudgement by battle.

CHAP. 7.

This is at this present not much vsed, partly because of long time the Pope and the clergie to whom in times past wee were much subiect, alwaies cryed against it as a thing damnable and vnlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habites, yea and kindes of trials and iudgements, and to all other thinges that is therein vsed, time and space of yeares bringeth a chaunge. But I could not yet learne that it was ever abrogated. So that it remaineth in force, whensoeuer it be demanded. The maner of it is described in Briton.

The triall by assise or xij. men, & first of the three partes which be necessarie in iudgement.

CHAP. 8.

The two first iudgements be absolute supreme and withoutappeale, and so is also the iudgement by the great assise. And because our manner of iudgements in England is in many thinges different from the fashion vsed either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the ciuill lawes) be put in use, it will be necessarie here to make a little digression, to the intent, that that which shalbe said hereafter may be better vnderstood. All pursuities and actions (we call them in our English tongue *pleas*) and in barbarous (but now vsual) latine *placita*, taking that name *abusiu* of the definitiue sentence, which may well be called *placitum* or *dictum*. The French vseth the same calling in their language, the sentence of their judges areste or arrest: in which wordes notwithstanding after their custome they do not sounde the *s*, but we call *placitum* the action

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not the sentence, and placitare barbarouslie, or to pleade in englith, agere or ligare. Now in all iudgements necessarily being two parties, the first we call the impleader, suiter, demaunder or demaundaunt and plaintiffe. In criminall causes if he professe to be an accuser, we call him appellant or appellour, and so accusation we call appeale. The other we call the defendant and in criminall causes prisoner, for he cannot aunswere in causes criminall before he do render himselfe or be rendered prisoner.

Index is of vs called Judge, but our fashyon is so diverse that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges but the rij. men. And the same order aswell is in civill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. 9.

PLEAS or actions criminall be in English called pleas of the crowne, which be all those which fende to takis away a mans life or any member of him, for his euill deseruing against the prince and common wealth.

And this name is giuen not without a cause. For taking this for a principle that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subiectes is spoyled either of life or member, the prince is endammaged thereby, and hath god cause to aske accompt, how his subiectes should come to that mischiefe. And againe for so much as the prince who gouerneth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well gouerned, the life, members and possessions of his subiectes kept in peace and assuraunce; he that by violence shall attempt to breaue that

that peace and assuraunce , bath forfaited against the scepter and crowne of England: and therfore not without a cause in all inquisitions and inditementes, if any be founde by the riȝ. men to haue offended in that behalfe, freight the prince is saide to be partie , and hee that shall speake for the prisoner shall be rebuked , as speaking against the Prince. Neuerthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for him, al the reasons, meanes and defences that he can, and shall be peaceable heard and quietlie: But in those pleas & pursutes of the crowne, procurer or aduocate he gettes none, which in ciuill and pecuniarie matters (be it for lande, rent, right , or possession , although he plead against the prince himselfe) is never denied.

Pleas ciuill be either personall or reall, personall as contractes or for injuries : reall be either possessio[n] to aske, or to keepe the possession, or in *rem*, which we call a writte of right . For that which in the ciuill lawe is called *actio* or *formula* , we call writ in English: so the Greces called it *wordē* for *wordē* , and in our bar-
barous latine we name it *breue*.

And as the olde Romanes had their actions some *ex iure ciuili*, and some *ex iure pratorio*, and ordinarily *prator* dabant *actiones & formulas actionum* : so in Englande we retaine still this , and haue some writtes out of the chauncerie, other out of the common place or the kings bench.

Of the chiefe Tribunals, benches or courtes of Englande.

IN times past (as may appeare to him that shall with judgement reade the histories and antiquities of Englande) the courtes and benches followed the king

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Sauing in ap-
pels and vpon
a special plea.

Actio is the
parties whole
suite. *breue* is
the kings pre-
cept.

and his court wheresoever he went, especially shortly after the conquest. Which thing being found very cumbersome, painful and chargeable to the people, it was agreed by parliament, that there should be a standing place where judgement should be given. And it hath long time bene vsed in Westminster hall, which king William Rufus builded for the hall of his owne house. In that hal be ordinarily seene 3. Tribunals or Judges seates. At the entrie on the right hande, the common place, where ciuill matters are to be pleaded, specially such as touch landes or contractes. At the vpper ende of the hall, on the right hande, the kinges bench, where pleas of the crowne haue their place. And on the left hande sitteth the Chauncelloz accompanied with the master of the Roules, who in latine may be called *custos archiuorum regis*, and certaine men learned in the ciuill lawe called Masters of the chauncerie, in latine they may be named *Assessores*.

Of the times of pleading called termes, &
of the Chancellor and chauncerie.

CHAP. 17.

Two things may be moued in question here, how all Englannde (being so long and so large, and having so many shires and prouinces therein) can be answered of iustice in one place, and in 3. benches be they never so great? An another (whereas the kinges bench is exercised in criminall causes and in all pleas of the crowne, and the common place in all ciuill causes, reall and personall) what place then hath the chauncerie?

The first question will seeme more maruelous and haue more occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes

wealthes had all the yeare pleas, suites, and iudge-
mentes, except for certaine holie daies and haruest and
vintage, or when for some urgent cause the lawe was
commaunded to be stopped, which is called *Instiitum*:
Contrarie in ours, it is but selwe times open. That is
only foure times in the yeare which they call termes.
After Michaelmas about ten daies, during five or sixe
weeke at the least. After Chritmas about a moneth,
enduring by the space of threeweekes. Then from xvii.
dayes after Easter by the space of threeweekes and odde
dayes. Likewise from the sixt or seuenth day after
Trinitie sunday, during two weeke and odde daies.
All the rest of the yeare there is no pleading, entring
nor pursuing of actions. This small time, and all
that but in one place may seeme verie injurious to the
people, who must be faine to suffer much wrong for
lacke of Justice and of place and time to pleade: but unto
that hereafter I intende to answere moze fully, and
in the meane while that shall suffice which the wise
Cato aunswered to one who moued that the pleading
place in Rome might be couered ouer with canuas as
their theaters were, to the intent that the plaintifses
and defendauntes that were there might pleade their
matters moze at ease, and not be in so much danger of
their health by the heate of the sunne striking full and
open vpon their heads, which was no small griefe and
disease, specially at Rome. Nay (saith Cato) for my
part I had rather wish that all the waies to the place
of pleading were cast ouer with galthrops, that the feete
of such as loue so well pleading, should feele so much
paine of those prickes in going thither as their heads
doe of the sunne in tarrying there: he meant that they
were but idle, whot heades, busie bodies, and trouble-
some men in the common wealth that did so nourish
pleading: god labourers and quiet men could be con-
tent to ende their matters at home by iudgement of

their neighbours and kinsfolke without spending so
their money vpon procurers and aduocates whom we
call attornies, counsellers, Sergeants, and generallie
men of lawe. Those be accounted profitable citizens,
who attende their honest labour and busynesse at home,
and not stande waiting and gaping vpon their rolles
and processe in the lawe: as soz the other by his iudg-
ment, it was no matter what mischiefe they suffered.
To the other question of the chancerie, this I answe: That
our lawe which is called of vs the common lawe
as ye would say *Ius civile*, is and standeth vpon ~~exequi-~~
~~rebus~~, that is *Ius summum*: and their maximees be taken
so straitlie that they may not depart from the tenour
of the wordes even as the olde ciuill lawe was. And
therefore as that lacked the helpe of a Prætor (which
might moderari illud *ius summum*, giue actions where
none was, mitigate the exactnesse and rigour of the
lawe written, giue exceptions, as *meritis, doli mali, minoris etatis, &c.* for remedies, and maintaine alwaies
equum & bonum:) the sanie order and rancke holdeth
our chauncerie, and the chauncelloz hath the verie au-
thoritie herein as had the Prætor in the olde ciuill lawe
befo're the time of the Emperours. So he that putteth
vp his bill in the chauncerie, after that he hath declared
the mischiefe wherein he is, hath release as in the so-
lemnne *forum*. And soz so much as in this case he is
without remedie in the common lawe, therefore he re-
quireth the chauncelloz according to equitie and reason
to prouide for him and to take such order as to god
conscience shall appertaine. And the court of the chaun-
cerie is called of the common people the court of consci-
ence, because that the chauncelloz is not strained by ri-
gour or forme of wordes of lawe to iudge but *ex equo*
and *bono*, and according to conscience as I haue saide.
And in this court the vsuall and proper forme of plea-
ding of Englande is not vsed, but the forme of plea-
ding

ding by writing, which is vsed in other countries according to the ciuill lawe: and the triall is not by rite men, but by the examination of witnesse as in other courtes of the ciuill lawe.

Of Judges in the common Lawe of
England, and the manner of tryall
and pleading there.

CHAP. 12.

The Prince out of the numbers of those who haue
beene Counsellors or Sergeants at the Law, which
be those who in latin are called *causidici* or *aduocati*, choo-
seth two of the most approued for learning, age, discre-
tion, and exercise, of whom the one is called chiefe Ju-
stice of the Kings bench, or simply chiefe Justice, the o-
ther chiefe Justice of the common place, and others to
the number of sixe or more, which haue each an ordina-
rie fee or stipend of the Prince.

These doe sit at such daies as be terme, which may
be called *Dies legiimi iuridici* or *fasti*, in their distinct
places as I haue said before. There they heare the plea-
ding of all matters which doe come before them: and in
ciuill matters where the pleading is for money or land
or possession, part by writing, and part by declaration
and altercation of the aduocates the one with thoother,
it doeth so procede before them till it doe come to the
issue, which the latines doe call *satum causa*, I doe not
meane *contestationem luis*, but as the Rhetoritians doe
call *satum*, we doe most properly call it the issue, for
there is the place where the debate and strife remaineth
(as a water helde in a close and darke vessel issueth out,
is boied and emptied) and no where else: that stroke
well striken is the departing of all the quarelles. Is-
sues or *satus* in our Lawe be ordinarily two, *facti*
and *inris*.

Of the two maner of issues.

CHAP. 13.

If the question be of the lawe, that is if both the parties doe agree vpon the fact, and eche doe claime that by lawe he ought to haue it, and will still in that sort maintaine their right, then it is called a demurrer in lawe: where if in the lawe the case seeme to the Judges that sitte doubtfull, it is called a checker chamber case, and all the Judges will meeet together, and what they shall pronounce to be the lawe, that is helde for right, and the other partie loseth his action or lande for ever. If the Sergeantz or Counsellorz doe stand vpon anis point in the law which is not so doubtfull, the Judges who be taken for most expert biddes him goe forwarde: and if he hath no other to say but standeth vpon that point of the lawe, that bidding goe forwarde is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Iuris*. So is that case where the lawe is not doubtfull according to the matter contained in the declaration, answere, replication, reioinder or triplication, the Judge out of hande decideth it. And it is the maner that eche partie must agree to the other stil in þ fact which he cannot denie. For if he once come to denie any deede as not done, nor his writing, that the man by whome the aduersarie claimeth was not the aduersaries ancestor, or the evidence which his aduersarie bringeth is not true, or that his gift was former, or any such like exception which is vailable to abate the action or barre the partie: and the other ioyneth in the affirmative and will auerre and prove the same, this is called the issue, and immediatly all question of the lawe ceaseth as agreed by both the parties

But sometimes
it is determi-
ned by the
same court
only.

This shoulde
be meant of a
respondes
ouster, when
the opinion is
against him
that taketh an
exception
which is not
peremptorie.
He may deny
it by protesta-
tion.

parties, that there is no question in the lawe. Then as that issue facti is founde by the rij men of whom ws shall speake hereafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill lawe where first the fact is examined by witnessses, indices, tormentes and such like probations to finde out the truth thereof, and that done the aduocats doe dispute of the lawe to make of it what they can: saying, *ex facto ius oritur*: heere the Sargeantes or counsellers before the Judges doe in passing forswarde with their pleading determine and agrée vpon the lawe, and for the most part and in manner all actions as well criminall as ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other: which fact being tried by the rij men as they find, so the action is wonne or lost. And if a man haue many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the rij men be commonly rude and ignorant, the partie shalbe compelled to chosse one exception whereupon to found his issue, which chosen if he faile in that by the verdite of rij men, he loseth his action and cause, and the rest can serue him for nothing.

Having seene both in France and other places manie deuises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorster: I haue not perceiued nor reade as yet so wise, so iust, and so well deuised a meane found out as this by any man among vs in Europe.

Trueth it is that where this fashion hath not bene vsed and to them to whom it is newe, it will not be so easily understood, and therefore they may peraduenture be of contrarie iudgement: but the moze they doe weigh and consider it, the moze reasonable they shall finde it.

Howe the issue, question or *status iuris* is decided, I
haue

have tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the deede or fact. And first I must speake more largely of the manner of proceeding in the processe, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the court of exchequer.

CHAP. 14.

The Romans had to execute the commaundementes of the magistrates *lictores, viatores, accensores*. The ci-
nill lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily done by the Sherifes. The Sherife (which is as much to say as the *Reue or Wayly of the shire*) is properly word for word *Questor prouincie*: it is he which gathereth uppe and ac-
compteth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis, or erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first cal-
led *statarium*, because that there was the stable place to account for the revenues of the crowne, aswell that which came of the patrimony which we cal the demeas-
nes: as that which commeth of other incident acquisi-
tions be they rentes, customes, tenthes, quinziesmes,
tares, subsidies, wheresoever the Prince or his court
be according to the time and occasion) was a place sta-
ble, continual and appointed for to recken and account. The hearers of the account (who in latin may be called *tribunarij*) haue auditours vnder them which the La-
tines doe call *Rationales*: but they are the chiefe for the accounts of the Prince, and may be called *Iuridicratio-
nales*, in English we cal them Barons of the exchequer,
whereof

Scates in auncient Saxon
is that which
we by a borow
ed terme call
treasure, wher-
of is deriued
Scaccariū sig-
nifying a court
dealing with
the kinges
treasure or re-
venues, & also
escactor that
is an officer
which emploith
the kinges
profit.

whereof is one who is called the chiese Baron, as *Tribunus* or *Iuridicus rationalis primus* or *princeps*. The chiese of all is called high treasurer of Englande, as you would say in latin *Supremus erarii anglici questor*, or *Tribunus erarius maximus*. In this court be heard *Quadruplatores* (which we call promoters) which be those that in popular and penall action be *delatores*, haning thereby part of the profit by the lawe assigned. In this court if anie question be, it is determined after the or-
der of the common lawe of Englande by the xij men as I haue saide: and all customeris which were in latine called *publicarii* in *Grecce* do account in this office. The *Sherife* of the shire is called in our common latine *Vicecomes*, as one would say *vicarius comitis* or *procomes*, doing that seruice to attende vpon the execution of the commaundementes of the *Tribunalles* or *Judges* which the Earle or countie shoud doe, which Earle or Countey for the most part was attending vpon the Prince in the warres or otherwise about the Prince as the wozde beareth, *comes principis*: whereby it may appeare that the chiese office of the Countie or Earle was to see the kinges Justice to haue course and to be well executed in the shire or Countie, and the Princes reuenues well answered and brought in *erarium principis*, which is called of vs the treasurie.

If any fines or amerciaments, which in latin be cal-
led *multie*, be leuied in anie of the saide courtes vpon a-
ny man, or any arrerages of accountes by the latines
called *reliqua*, of such thinges as is of customes, taxes,
subsidies or any other such occasions, the same *Sherife*
of the shire doth gather and is respondent therefore in
the exchequer. As for other ordinarie rentes of patri-
moniall landes and most commonly for the taxes, cu-
stomes, and subsidies, there be particular receivers
and collectoris which doe answere it into the exchequer.
The *Sherife* hath vnder him an vnder *Sherife* at his

charge and appointment learned somewhat in the law, especially if he be not learned himselfe, & diuers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shyre, and their abilitie to goe vpon enquestes, either to discrete or to summon him to appeare whom the sherife shall appoint, and for this cause to the sherifes as to the minister most proper of the lawe the wryttes be directed.

When anie thing commeth to an issue of the deede or fact, there is a wryt or writing directed to the sherife of the shire where the lande is, whereupon the controuersie is, or where the man dwelleth of whome the money is demaunded, which wryt is called *venire facias*. Then after the same effect an alias, pluries or distringas according to the nature of the action to the returne of the sherife. And if for anis disobedience of not comming and appearing there be a fine (which the latins doe call *Multa*) set vpon any iurors head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therfore to the exchequer. The sherife also is readie by himselfe or by his vndersherife to serue aswell the Justices of peace in their quarter sessions as y Justices called *Itinerantes* in their great assizes, when they come into the shyre, which is twise in the yeare, to dispatch and voide actions criminall and civil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.

Of

Of the xij. men.

CHAP. 17.

Of what manner and order of men in the common
welth the xij men be I haue alreadie declared. The
sherise alwaies warneth xxiij to appeare, least perad-
uenture any might be sicke or haue a iust cause of ab-
sence: and if there be not enowe to make an enquest,
the absentes be amersed. For although they be called
xij men as a man would say *duodecim viri*, yet if they be
xvj, xx or the whole number of xxiij, that is no matter,
xij they must be at the least to make an enquest or as
some call it a quest. An enquest or quest is called this
lawefull kinde of triall by xij men. In actions ciuill
which is either of contractes or for lande or possession
when so many of those which be warned appeare at the
call as be able to make an enquest, which as I said be-
fore be no lesse than rii, either part when they be come
takeh their chalenges against so many of them as they
will, which be that he may not spende so much lande a
yeare, he is alied, feed, or seruant to his aduerte partie,
he is his enemie &c. And two of the whole number doe
trie and allowe or disallowe the rest. If after excepti-
ons there be so many rejected that there is not a full
enquest, in some cases that day is lost, in some the en-
quest is filled *ex circumstantibus*: when the quest is full,
they be sworne to declare the trueth of that issue accor-
ding to the evidence and their conscience. Then the
Sergeantes of either side declare the issue, and each for
his clyent saith as much as he can. Guidances of wri-
tings be shewed, witnessses be sworne, & heard before
them, not after the fashion of the ciuill law but openly,
that not only the rii, but the Judges, the parties and as
many as be present may heare what ech witnessse doeth

I 3

say:

That is not
order but a-
buse.

Courtesie and
not ducie.

say: The aduerte partie or his aduocates whiche wee call counsellers and sergeants interrogateth sometime the witnesses, and diueth them out of countenance. Although this may seeme strange to our Ciuillians nowe, yet who readeth Cicero and Quintillian well shall see that there was no other order and maner of examining witnesses or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses haue saide what they can, one of the Judges with a briefe and pithy recapitulation reciteth to the xii in summe the argumentes of the sergeants of either side, that which the witnesses haue declared, and the chiefe pointes of the euidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing, deliuering to them the euidence which is shewed on either part, if any be, (euidence here is called writings of contractes autenticall after the manner of England, that is to say, written, sealed and deliuered) and bideth them goe together. Then there is a bayliffe charged with them to keepe them in a chamber not farre off without bread, drinke, light, or fire vntill they be agreed, that is, till they all agree vpon one verdit concerning the same issue, and vpon one among them who shall speake for them all when they be agreed: for it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they give their determination: fewe I call vi or vii or viii wordes at the most (or commonly the issue is brought so narrow, that such number of words may be yngough to affirme or to denie it) which done they are dismissed to goe whither they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come some xx some xxx or xl miles or more, to the place where

where they gine their verdite all, the rest is of their owne charge. And necessarilie all the whole viii must be of the shire and iiii of them of the hundred where the lande lyeth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called hundreds,
lathes, rapes, wapentakes.

CHAP. 16.

An hundred, or lath, rape, or wapentake be called of the diuisions or partes of shires in diuers countreyes diuerlly named after the manner and language of each countrey. For the shires be diuided some into x. vii. xiii. xvi. xx. or xxx. hundreds, more or lesse, either that they were at the first C. townes & villages in eche hundred: and although now they be but xvi. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be nowe, or a fewe more or lesse, and they did finde the King to his warres an hundred able men. Lath, and rape I take to be names of service, for that so many townes in olde time, and in the first pouertie of the Realme did mete together in one day to carrie the Lordes coorne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lord to reape his coorne.

Wapentake I suppose came of the Danes or per-
aduenture of the Sarons. For that so manie townes
came by their orders then, to one place, where was ta-
ken a mouster of their armour and weapons, in which
place from them that could not finde sufficient pledges
for their god abearing, their weapons were taken a-
way: weapon or wapen in olde English doe signifie all
armes offensive, as sworde, dagger, speare, launce, bill, their wea-
bowes, pons.

bowes, arrowes.

Of the place where the musters were taken or where the saide seruices were done, the hundreds, Lathes, Rapes, and wapentakes had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth, such mutation time bringeth with it of all thinges. A hundred hath one or two high Constables, who hath some authoritie ouer all the lower, and particular Constables. Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his bayliffe, who is made by the Lorde if any hath that libertie, or else by the sherife of the shire for the time being.

Of the court Baron.

CHAP. 17.

IT may appeare strange that of xxxvi shires, whereof each shire is diuided into diuerse hundreds, each hundred containing diuerse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke y there should be much lacke of Justice & right, and much wrong taken without redresse. But it is not so: The people being accustomed to liue in such an equalitie of Justice, & that in such sort that y rich hath no more aduantage therein than the poore, the proces, and procedinges to the iudgement being so short, and iudgements also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other courtes.

courtes. In euerie shire from thre wekes to thre wekes the sherife for small thinges not passing rl. s. and in certaine hundreds and liberties the bailie likewise from thre wekes to thre wekes holdeth plea. And whosoeuer is possessioner and owner of a mannor, may holde from thre wekes to thre wekes, or at his pleasure of his tennantes and amongest his tennantes a court called a court Baron. And there his tennantes being sworne make a Jurie which is not called the enquest, but the homage. These principallie doe enquire of the copie holders, and other free holders that be dead sith the last court, and bring in their heires, and next successors, and likewise of incroachment or intrusion of anie of the tennantes against the Lorde, or among themselues. They make orders and lawes amongst themselues, the paine of them if they be after broken, commeth to the Lorde. And if anie small matter be in controuersie, it is put to them, and commonly they doe ende it. But these courtes doe serue rather for men that can be content to be ordered by their neighbours, and which loue their quiet and profit in their husbandrie, more than to be busie in the lawe. For whether partie soever will, may procure a writte out of the higher court to remoue the plea to Westminster.

In cities and other great townes there be diuerse liberties to holde plea for a bigger summe, which doe determine aswell as the common lawe, and after the same manner, and yet for them that will, it may be remoued to Westminster hall.

King Henrie the eight ordained first a president, Counsellers and Judges, one for the marches of Wales, at Ludlowe, or else where; an other for the north partes of Englannde at Yorke, where be manie causes determined. These two are as be Parliaments in Fraunce. But yet if there be anie matters of great consequence, the partie may moue it at the first, or re-

B

moue

move it afterwardes to Westminster hall, and to the
ordinarie Judges of the Realme, or to the Chaunceller,
as the matter is.

These two courtes doe heare matters before them,
part after the common lawe of Englande, and part af-
ter the fashion of the chauncerie.

Of the Leete or lawe day.

CHAP. 18.

Leete or lawe day is not incident to euerie mannor,
but to thole onely whiche by speciall graunt, or long
prescription haue such libertie. This was as it may
appeare first a speciall trust and confidence and com-
mission giuen to a fewe put in trust by the Prince, as
is nowe to the Justices of peace, to see men swozne to
the Prince, to take pledges and suerties in that maner
of one for an other to answeare for obedience and truth,
to enquire of priuie conspiracies, fraies, murders, and
bloudsheddes, and to this was added the oversight of
bread and ale, and other measures. Many times they
that be out of the homage and court Baron of that
mannor and Lordship, be neverthelesse astreined and
answerable to come to the Leete. This Leete is ordi-
narily kept but twise in the yeare, and that at termes
and times prescribed.

The Leete or Lawe day is all one, and befookeneth
wordre for wordre, *legitimum or iuridicum diem*. Lawe
the olde Sarons called lant or lag, and so by corrupti-
on and chaunging of language from Lant to Leete,
vnderstanding day. They which keepe our full english
terme, call it yet lawe day.

Of

Of the proceedinges of causes cri-
minall, and first of the Iustices
of the Peace.

CHAP. 19.

BEfore the maner of proceding in causes criminall
can be well understand, it will be necessarie to speake
of thre persons, the Iustices of peace, the Coroners,
and the Constables. The Iustices of peace be men ele-
ected out of the nobilitie, higher and lower, that is the
Dukes, Marquises, Barons, Knights, Esquiers, and
Gentlemen, and of such as be learned in the lawes,
such and in such number as the Prince shall think
meeke, and in whome for wisedome and discretion hee
putteth his trust, inhabitantes within the countie: sa-
ying that some of the high nobilitie and chiese magi-
strates for honours sake are put in all, or in the most
of the commissions of all the shires of England. These
hauie no time of their rule limited but by commission
from the Prince alterable at pleasure.

At the first they were but iiii, after viii, nowe they
come commonly to xxx or xl in euerie shire, either by
increase of riches, learning, or activitie in policie and
gouernement. So manie more beeing founde, whith
hauie either will, or powrer, or both, are not too manie
to handle the affaires of the common wealth in this
behalfe. Of these in the same commission be certaine
named, which be called of the *Quorum*, in whome is e-
speciall trust reposed, that where the commission is gi-
uen to xl or xxx, and so at the last it commeth to iiii or
thre, it is necessarie for the performance of many af-
faires to hant likewise diuerse of the *Quorum*. The
wordes of the commission be such, *Quorum vos A B.*
C D. E F. unum esse volumus.

The Iustices of the peace be those in whome at this
time

time for the repressing of robbers, theenes, and vagabonds, of priuie complots and conspiracies, of riotes, and violences, and all other misdemeanors in the common wealth, the Prince putteth his special trust. Each of them hath authoritie upon complaint to him made of any theft, robberie, manslaughter, murder, violence, completes, riottes, vnlawefull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom he supposeth offendors, to the prison, and to charge the Constable or Sherise to bring them thither, the gaoler to receave them and keepe them till he and his fellowes doe meete. A fewe lines signed with his hande is ynochough for that purpose: these doe meete fourre times in the yeare, that is, in each quarter once, to enquire of all the misdemeanors aforesaid: at which dates the Sherise, or his vndersherise with his baylifys be there to attende vpon him, who must prepare against that time fourre enquesses of xxiij yemen a peice of diverse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These fine enquesses are sworne before them to enquire of all heretiques, traitors, thefes, murders, manslaughters, rapes, false moniers, extortioners, riottes, routes, forcible entries, vnlawefull games, and all such thinges as be contrarie to the peace and god order of the Realme, and to bring in their verdict. If they among themselues upon their owne knowledge doe finde any culpable, they cause one of the clarkes to make the bill. And if any be there to complaine vpon any man for these faultes, he putteth in his bil, which bil is presented first to the Justices sitting vpon the bench, to see if it be concerned in forme of lawe, which done the complainant doth deliver it to one of these enquesses, & after the complainant is sworne, he declareth to the what he can, for ympe of it. And if they find it true they do nothing but write

This is not alwaies and in al places obserued, but onely concerning the graunt enquest.

write on the backeside of it, *bills vera*, as ye would say,
scriptum verum: or accusatio in ista, or reus est qui accusatur: Then he who is there named is called indicted.

If they do not finde it true, they write on the back-
 side *ignoramus*, & so deliuer it to the Justices of whome
 it is sent into pieces immediatly: he that is indicted is
 accounted a lawfull prisoner, and after that time lo-
 ked more streitly unto. For this inditement is no
 conuiction: and if he be indicted, and be not alreadie in
 prison, the sherife if he can finde him, bringeth him
 into prison: if he cannot finde him, proces is made out
 against him, to render himselfe prisoner, or else hee
 shalbe outlawed. So he is called thre times in diuerse
 countie daies to render himselfe to the Lawe. The
 fourth is called the exigent, by which he is outlawed
 not rendring himselfe, as ye would say: *exactus or ac-
 tus in exilium*. The outlawe loseth all his gods to the
 King for his disobedience. But if after he will render
 himselfe to answere to the lawe, and shewe some rea-
 sonable cause of his absence, manie times of grace his
 outlatwerie is pardoned. These meetings of the Ju-
 stices of peace foure times in the yeare, be called quar-
 ter sessions or sessions of enquirie, because that no-
 thing is there determined touching the malefactors,
 but onely the custodie of them: and this kinde of pro-
 ceding which is by inquisition of the riȝt men within
 themselves, and their owne consciences, or by denun-
 ciation of him that putteth in his bill to the riȝt, is cal-
 led at the kings suite, and the king is reckoned the one
 partie, and the prisoner the other. The Justices of the
 peace doe meeete also at other times by commandement
 of the Prince vpon suspition of warre, to take order
 for the safetie of the shire, sometimes to take musters
 of harnesse and able men, and sometime to take orders
 for the excellewe wages of seruaunts and labourers,
 for excesse of apparell, for vnlawfull games, for con-

The vse of ca-
 pias and exi-
 gent vpon in-
 ditementes is
 otherwise.

They are put
 to fines.

uenticles and euill orders in alehouses, and tauernes, for punishment of idle and vagabond persons, and generally as I haue saide, for the god governement of the shire, the prince putteth his confidence in them. And commonly euery yeaer, or each seconde yeaer in the beginning of summer or afterwardes, (for in the warme time the people for the most part be moze vnrule) euin in the calme time of peace, the prince with his Counsell chooseth out certaine articles out of penall Lawes alreadie made for to reppresse the pride and euill rule of the popular, and sendeth them downe to the Justices, willing them to looke vpon those points, and after they haue mette together and consulted among themselves, howe to order that matter most wisely and circumspectly, whereby the people might be kept in god order and obedience after the lawe, they diuide themselves by thre or four: and so each in his quarter taketh order for the execution of the saide articles. And then within certaine space they meete againe and certifie the prince or his priuie counsell how they doe finde the shire in rule & order touching those points and all other disorders. There was never in any common wealth diuised a moze wise, a moze dulce and gentle, nor a moze certaine way to rule the people, whereby they are kept alwayes as it were in a b[ea]tiful order, & sooner looked vnto that they shold not offend, than punished when they haue offend. For seeing the chiefe amongst them, their rulers to haue this speciall charge and doe call vpon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders & lawes, they take a feare within themselves, they amende and doe promise moze amendment. So that it is as a newe forbushing of the god lawes of the realme, and a continual repressing of disorders, which doe naturally rest among men. But as the inuention of this, and
the

the vse and execution thereof is the most benefite that can be denised for the common wealth of Englande: So when it shalbe misused, dissembled with, or be contemned, & be done *pro forma tantum*, and as they terme it in Fraunce par mainere d'acquit onely, it will be the present ruine (though not at the first apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making god choice what and howe they commaunde, as in the commaunded, for not executing that which is commaunded.

Of hue and crie and recognisaunce
taking vpon them that may
givue evidence.

C H A P. 20.

By the olde lawe of Englande if any theft, or robberie be done, if he that is robbed, or he that saeth or perceiueth that any man is robbed doe leuie hue & crie, that is to say, doe call and crie for aide, and say that a theft or robberie is done contrarie to the Princes peace and assurance: The Constable of the village to whom he doth come, and so make that crie, ought to raise the parish to aide him and seeke the theefe, and if the theefe be not founde in that parish, to goe to the next and raise that Constable, and so still by the Constables and them of the parish one after an other. This hue and crie from parish to parish is caried, till the theefe or robber be founde. That parish which doeth not his dutie, but letteth by their negligence the theefe to depart, doeth not onely pate a fine to the king, but must repaire to the partie robbed his dammages. So that everie English man is a sergiant to take the theefe, and who sheweth himselfe negligent therein, doth not only incurre euill opinion therefore, but hardly shall escape

punishment: what is done with the thēſe or robber
 When he is taken, I ſhall ſhewe you hereafter. The
 ſame manner is followed if anie man be ſlaine, for
 ſtreight the murtherer is pursued of euerie man till
 he be taken. So ſoone as any is brought to the Justices
 of peace by this hue or crie, by the Conſtable or anie o-
 ther who doth pursue the malefactor, he doeth examine
 the malefactor, and wriþeth the examination and his
 confeſſion: then he doth binde the partie that is robbed
 or him that ſueth, and the Conſtable, and ſo manie as
 can giue evidence againſt the malefactor to be at the
 next ſeſſions of gaole deliuerie to giue their evidence
 for the Dueene. He bindeth them in recogniſance of x l.
 xx l. xxx l. xl l. or C. l. according to his diſcretion, and
 the qualitie of the crime: which certiſed vnder his
 hande, is leuiied vpon the recogniſance if they ſayle of
 being there.

Of the Coronor.

CHAP. 21.

But if anie man, woman, or childe, be violently ſlaine,
 the murtherer not knownen, no man ought or dare
 burie the bodie before the Coronor hath ſeene it. The
 Coronor is one chosen by the Prince of the meaner
 ſort of gentlemen, and for the moſt part a man ſeene
 in the lawes of the Realme to execute that office. And
 if the person ſlaine, (ſlaine I cal here, whosoever he be,
 man, woman, or childe that violently commeth to his
 death, whether it be by knife, poyſon, cord, drowning,
 burning, ſuffocation, or otherwife, be it by his owne
 fault or default, or by any other) if (I ſay) the person
 ſlaine be buried before the Coronor doe come (which
 for the moſt part men dare not doe) he doeth cauſe the
 bodie to be taken vp againe, and to be ſearched, and
 vpon

Upon the sight of the bodie so violently come to his death, he doth empanell an enquest of xiij men or mo, of those which come next by, be they strangers or inhabitants, which upon their othes, and by the sight or viewe of the bodie, and by such informations as they can take, must search howe the person slaine came to his death, and by whome as the deer or causer thereof. These are not inclosed into a streit place, (as I tolde before of other enquestes) but are suffered to goo at large, and take a day, sometime after xx or xxx dayes, more or lesse, as the fact is more euident, or more kept close, to give their evidence, at which day they must appere there againe before the sayde Coroner to give their verdict. So sometime the person slaine himselfe, sometime the brother, the husbande, the wife, the sister, some of acquaintance or stranger, such as God wil haue reveiled, be taken. For whosoever they doe finde as guiltie of the murder, he is streight committed to prison, and this is against him in the nature of an indictment, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the viewe
of the bodie, and the giuing of the verdict, is common-
ly in the straete in an open place, and in *Corona populi*:
but I take rather that this name commeth because
that the death of euerie subiect by violence is accounted
to touch the crowne of the Prince, and to be a detri-
ment vnto it, the prince accounting that his strength,
power, and crowne doth stande and consist in the force
of his people, and the maintenaunce of them in securi-
tie and peace.

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Of the Constables.

CHAP. 22.

These men are called in the elder booke of our lawes
of the Realme *custodes pacis*, and were at the first
in greater reputation than they be nowe. It may ap-
peare that there was a credit giue unto them not alto-
gether unlike to that which is nowe giuen to the Justi-
ces of peace. To this day if any affraide chancie to be
made, the Constables ought and will charge them that
be at debate to keepe the Princes peace: and whosoever
refuseth to obey the Constable therein, all the people
will set streight vpon him, and by force make him to
render himselfe to be ordered. Likewise if any be suspe-
cted of theft, or receiving, or of murther, or of man-
slaughter, the Constable may take such persons, yea
enter into any mans house with sufficient power to
search for such men till he finde them: and if hee see
cause keepe the suspected persons in the stockes, or cu-
stodie, till he bring them before a Justice of the peace to
be examined. But for so much as euerie little village
hath commonly two Constables, and many times ar-
tificers, labourers and men of small abilitie be chosen
unto that office, who haue no great experiance, nor
knowledge, nor authuritie, the Constables at this
present (although this they may doe vpon their owne
authuritie) yet they seeme rather to be as it were the
executors of the commaundement of the Justices of
peace. For the Justice of peace as soone as he understandeth
by complaint that any man hath stolen, robbed,
slaine, or any servant or labourer without licence hath
departed out of his maisters seruice, or any that liueth
idle and suspectly, knowing once in what parish he is,
he wrieth to the Constable of the parish, commanding
him

One or two
Constables,
hedboroughes
or tithingmen.

him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doth finde cause, hee committeth him to the same Constable to convey him further to the Princes gaole, where the partie must lie till the Justices of peace doe mete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places headborowes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and sworne at the Leetes of the Lordes, chosen thereto by the homage, and they kepe that office sometime ii. iiij or vij yeare, more or lesse, as the parish doth agrē. What headborow doth betoken it is easily knownen, our language doth declare him as the head or chiese of the bozoine or village: likewise tithing man is the chiese of y tithing. Constable see meth to me to come of our olde English wrod Kunning, which is Kinnynghstable, as ye would say a man establisched by the king, for such thinges as appertaineth to pleas of the crowne & conseruation of the kings peace, & as I saide at the first were in some more reputation, approaching to that authoritie which the Justices of peace nowe doe holde.

Kinningstable
is Regia virgu-
la, the Kinges
rod or wand,
signifying the
Kinges power
or authoritie,
a representa-
tion whereof
is the vse of
maces & white
staues by offi-
cers in the co-
mon wealth.

Of the sessions of gaole deliuerie, and
the definitive proceedinges in
causes criminall.

CHAP. 23.

Howe thēnes and murtherers and other malefa-
ctors against the crowne and the peace are taken &
brought into holde to answere to justice, partly by hue

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and erie, partly by information, and partly by the diligence of the Justices of peace and the Constables, and howe that at the quarter sessions they be indicted, or else by the Coroners yee haue hearde before. Enditement (as yee may perceiue by that which is also gone before) is but a former judgement of viij men which be called enquirers, and no definitiue sentence, but that which in latin is called *praeiudicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be endited, yet if when he come to the araignement, there be no man to pursue further, nor no evidence of witnessesse or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be deliuered without araignement. For as viij haue giuen a preiudice against him, so viij againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspition or suspitious behaviour, and none doe pursue him to the enditement, first being proclaimed thus, A. B. prisoner standeth heere at the barre, if anie man can say anie thing against him, let him now speake, for the prisoner standeth at his delineraunce: if no man doe then come, hee is deliuered without any further proces or trouble, agreeing first with the gaoler for his fees. And these be called acquitted by proclamation. Twise euerie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer, the Prince doth sende downe into euerie shire of Englande certaine of his Judges of Westminister hall, and some Seargeantes at the lawe with commission to heare and determine iointly with the Justices of the peace all matters criminall and all prisoners which be in the gaoles. These Judges doe goe from shire to shire till they haue done their circuit of so manie

nie shires as be appointed to them for that yeare: at the ende of the terme going before their circuit it is written and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Justices of the peace of that shire, the sherrise of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer. The sherrise hath readie for criminall causes (as I writ before at the sessions of inquire) *ivij. v. or vi.* enquestes readie warned to appeare that day to serue the Prince, and so manie moare as he is commaunded to haue readie to go in ciuill matters betwixt priuate men, which they call *Nisi prius*, because that worde is in the writ.

In the towne house, or in some open or common place, there is a tribunall or place of iudgement made aloft upon the highest bench, there sitteth the two Judges which be sent downe in Commission in the middest. Besy them on eche side, sitteth the Justices of peace, according to their estate and degréé. On a lower bench before them, the rest of the Justices of the peace, and some other gentlemen or their clarkes. Before these Judges and Justices, there is a table set beneath, at which sitteth the *Custos rotulorum*, or keeper of writtes, *Chercheto*, the vndershirise, and such clarkes as doe write. At the ende of that table, there is a barre made with a space for thenquestes and vs men to come in when they are called, behinde that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. Then the Judges briefly telleth the cause of their comming, & giueth a good lesson to the people. Then the prisoners are called for by name, and bidden to aunswere to their names. And when the *Custos rotulorum* hath brought forth their enditements, the Judges doe name one or

two or thre of the prisoners that are endited, whom they will haue arraigned. There the clarke speaketh first to one of the prisoners : A. B. come to the barre, hold vp thy hand. The clarke goeth on : A. B. thou by the name of A. B. of such a towne, in such a countie, art endited, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a valor, and carried him away feloniouslie, & contrarie to the peace of our soueraigne Ladie the Queene. What layest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere directly guiltie or not guiltie, after he hath bene once or twise so interrogated, he is iudged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be : he is laide vpon a table, and an other upon him, and so much weight of stones or lead laide vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong & stout hearted man doth choose, for being not condemned of felonie, his bloud is not corrupted, his lands nor gods confiscate to the Prince, which in all cases offelonie are commonly lost from him and his heires, if he be foreiudged, that is condemned for a felon by the lawe. If he confess the enditement to be true, then when he is arraigned, no xii. men goeth vp on him, there resteth but the Judges sentence, of the paine of death.

If he pleade not guiltie, as commonly all theues, robbers, & murtherers doe, though they haue confessed the fact before the Justice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti crimine*, howsoever it be, if he pleade there not guiltie, the Clarke asketh him howe he will be tryed, and tellet him he must saie, by God and the Countrie, for these be the wordes sommell
of

of this triall after Inditement, and where the Prince is partie ; if the prisoner doe say so, I will be tryed by God and the Countrie , then the Clarke replyeth, Thou hast beene endited of such a crime, &c. Thou hast pleaded not guiltie : being asked howe thou wilt be tryed , thou hast aunswere by God and by the Countrie. Loe these honest men that be come here , be in the place and stead of the Countrie ; and if thou hast any thing to say to any of them , loke vpon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Iuroz. B. C. come to the booke , and so gineth him an othe to gos uprightlie betwixt the Prince and the prisoner , &c. If the prisoner obiecteth nothing against him, he calleth an other, and so an other, till there be xii. or aboue : and for the most part the prisoner can say nothing against them, for they are chosen but for that day , and are vñknowen to him, nor they know not him, as I said being substantial yeomen, that dwell about the place , or at the least in the hundred , or nere where the felonie is supposed to be committed, men acquainted with daily labour and trauaile , and not with such idle persons , as be readie to doe such mischieses.

When the enquest is full, and the prisoner hath obiecteth nothing against them , as in dede seldom he doeth , for the cause aboue rehearsed : The clarke saith to the cryer, countes, (in French as ye would say recken) and so nameth all those that be on the quest. The cryer at euerie name cryeth aloude , one , then ii. iii. iiiit. and so till the number be full of xii. or more, & then saith god men and trueand then saith aloude : If any can give evidence , or can say any thing against the prisoner, let him come nowe , for he standeth vpon his deliverance . If no man come in , then the Judge asketh who sent him to prison , who is commonly one of the Justices of peace. He if he be there deliuere by the

examination which he tooke of him, and vnderneath the names of those whom he hath bound to give euidence, although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his hande and confirmation, the riij. men will acquite the prisoner, but they which shoulde give euidence pay their recognizance. Howbeit this doth seldeome chaunce, except it be in small matters, and where the Justice of peace, who sent the prisoner to the gaole, is away. If they which be bound to give euidence come in, first is read the examination, which the Justice of peace doeth give in: then is heard (if he be there) the man robbed what he can say, being first sworne to say trueth, and after the Constable, and as many as were at the apprehension of themalefactor: and so many as can say any thing being sworne one after an other to say truth. These be set in such a place as they may see þ Judges and the Justices, the enquest and the prisoner, & heare them, and be heard of them all. The Judge first after they be sworne, asketh first the partie robbed, if he knowe the prisoner, and biddeþ him looke vpon him: he saith yea, the prisoner sometime saith nay. The partie pursuiaunt giueth god ensignes *verbi gratia*, I knowe thee well ynoch, thou robbest me in such a place, thou beatest mee, thou tokest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy companie: the þese will say no, and so they stand a while in alteration, then he telleþ al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can give any *indices* or tokens which we call in our language euidence against the malefactor. When the Judge hath heard them say ynoch, he asketh if they can say any more: if they say no, then he turneth his speeche to the enquest. God men (saith he) ye of the enquest, ye haue heard what these men say against the prisoner,

prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your duetie, & doe that whiche God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ii. or iii. prisoners: For if they shoulde be charged with more, the inquest will say, my Lorde, we pray you charge vs with no more, it is y-nough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing given them, but the enditement, the clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what gods, landes, and tenementes, the saide person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shal say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue evidence to interrogate them more at full, or if any that can giue evidence come late: it is permitted that anie that is sworne to say the trueth, may be interrogated of them to enforme their consciences. This is to be vnderstood although it will seeme strange to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Judges, the Justices, the enquest, the prisoner, and so many as will or can come so neare as to heare it, and all depositions and witnessesse given aloude, that all men may heare from the mouth of the

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depositors and witness(es) what is saide. As of this, so is it of all other prisoners after the same sort. By that time that the enquestes for the prisoners be dispatched, it is commonly dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie for the prisoners, they goe to some other enquestis of *nisi prius*, which be ciuill matters and priuate to digne out the time. The enquestes haue no sooner agreed vpon their charge one way or other, but they tell the Bailife, and pray to bee heard, and considering that they be themselves all this while as prisoners as I saide before, it is no maruell, though they make expedition. The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for each one of the Jurie by his name, to which he answereth. Then the clarke asketh if they be agreed, and whos shall speake for them. One or moe saith yea. He that speaketh for them all is called the foreman, and commonlie it is he that is first sworne: then the prisoner is bidden to holde vp his hande. The clarke saith vnto him, Thou art endited by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked howe thou would be tryed, thou sayst by God and thy countrey. These honest men were given to thee by God & thy Prince for thy Countrey: Pearken what they say. Then he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter or chaunge that matter, if they say guiltie. The clarke asketh what landes, tenementes, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswered that they knowe not, nor it shall not greatly nede, for the Serife is diligent

diligent ynough to enquire of that, soz the Princes and his owne aduantage, and so is the excheator also.

Of him whom the riȝ. men prounounce guiltie, the Judge asketh what he can say soz himselfe: if he can reade, he demandeth his Clergie. For in many felonies, as in theft of oren, sheepe, money, or other such thinges, which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Lawe, that soz the first fault the felon shalbe admitted to his Clergie, soz which purpose the Bishop must send one with authozitie vnder his scale to be Judge in that matter at cuerie gaole deliuerie. If the condemned man demandeth to be admitted to his booke, the Judge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime verie slenderly:) then he asketh of the Bishops commissarie, legit vt clericus? The commissarie must say legit or non legit, soz these be wordes formall, and our men of Lawe be verie precise in their wordes formall. If he say legit, the Judge procedeth no further to sentence of death: if he say non, the Judge forthwith, or the next day procedeth to sentence, which is done by worde of mouth onelie: Thou A. hast beene endited of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrey, they haue found thee guiltie, thou hast nothing to say soz thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then he sayth to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned forthwith in the presence of the Judges in the brawne of his hande with a hot yron marked with the letter T. soz a threſe, or M, soz a manslear, in cases where Cler-

The deliuerie
to the Bishops
prison, and
the purgation
is taken away
by statute.

gie is admitted, and is delivred to the Bishops officer
to be kept in the Bishops prison, from whence after a
certayne time by an other enquest of Clarkes he is deli-
uered and let at large: but if he be taken and condem-
ned the second time, and his marke espied, he goeth to
hanging. He whom the enquest pronounceth not guil-
tie is acquitted forthwith and discharged of prison,

paying the gaolers fees: and if hee knowe any pri-
uate man who purchased his inditement, and is able
to pursue it, he may haue an action of conspiracie a-
gainst him, and a large amendes: but that case chaun-
ceth seldom.

They must be
two at the
least that con-
spired.

Certaine orders peculiar to England,
touching punishment of malefactors.

CHAP. 24.

For anie felonie, manslaughter, robbery, murther,
rape, and such capitall crimes as touch not treason &
lesam maiestatem, we haue by the Lawe of Englande no
other punishment, but to hang till they be dead: when
they be dead, euerie man may burie them that will, as
commonly they be. Heading, tormenting, demembryng,
either arms or legge, breaking vpon the wheele, empa-
ctiling, & such cruell tormentes, as be vsed in other nati-
ons by the order of their law, we haue not: & yet as few
murthers committed as any where: nor it is not in the
Judges or the Justices power, to agrauate or miti-
gate the punishment of the Lawe, but in the Prince
only and his priuie Counsell, which is maruellous
seldom done. Yet notable murtherers many times by
the Princes commandement, after they bee han-
ged with corde till they bee dead, bee hanged with
chaines while they rotte in the ayre. If the wife
kill her husbande, she shall bee burned aliue, If the
ser-

seruaunt kill his master , hee shall bee drawen on a hurdle to the place of execution : it is called petit treason . Impoisoners, if the person die thereof, by a newe lawe made in King Henrie the eightts time shalbe boyled to death:but this mischiefe is rare and almost vnknowen in England . Attempting to impoison a man, or laying a wait to kill a man , though he wound him daungerously , yet if death followe not , is no felonie by the lawe of Englannde , for the Prince hath lost no man, and life ought to be given we say, but for life onely . And againe, when a man is murdered, all be principals and shall die , euen he that doth but hold the candle to giue light to the murderer . For mitigation and moderation of paines, is but corruption of Judges , as we thinke . Likewise , torment or question which is vsed by the order of the ciuill lawe and custome of other countries to put a malefactor to excessive paine, to make him confesse of himselfe , or of his felowes or complices, is not vsed in England , it is taken for servile . For what can he serue the common wealth after as a freé man, who hath his boodie so haled and tormented, if he be not found guiltie, and what amends can be made him ? And if he must die, what crueltie is it so to torment him before ? Likewise , confession by torment is esteemed for nothing , for if he confesse at the iudgement, the tryall of the xii goeth not vpon him : If he denie the fact, that which he saide before hindereth him not . The nature of English men is to neglect death, to abide no torment : And therfore he will confesse rather to haue done any thing, yea , to haue killed his own father, than to suffer torment, for death our natiō doth not so much esteem as a meane torment . In no place shal you see malefactors go more constantly , more assuredly , & with lesse lamentation to their death than in England . Againe, the people not accustomed to see such cruell tormentes , will pitie the person tormented , and

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abhorre the Prince and the Judges, who shold bring in such crueltie amongst them, and the xij. men the rather absoluē him. There is an olde lawe of Englande, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approuer, that is to say an accuser or *Index* of his complices, the gaoler shall die thereforē as a felon. And to say the truthe, to what purpose is it to use torment? For whether the malefactor confesse or no, and whatsoeuer he saith, if the enquest of xij. do find him guiltie, he dyeth thereforē without delay. And the malefactor, seeing there is no remedie, and that they be his countrie men, and such as he hath himselfe agrēd unto it, doe finde him worthie death, yeldes for the most part unto it, and doeth not repine, but doth accomodate him selfe to aske mercie of God. The nature of our nation is free, stout, haulte, prodigall of life and bloud: but contumelie, beatings, servitude and servile torment & punishment it will not abide. So in this nature and fashion, our auncient Princes and legislatores haue nourished them, as to make them stout hearked, couragidous and soldiery, not villaines and slaues, and that is the scope almost of all our policie. The xij. as soone as they haue giuen their verdict are dismissed to goe whither they will, and haue no maner commoditie and profit of their labour and verdict, but onely doe service to the Prince and common wealth.

Of Treason, & the trial which is vsed
for the higher nobilitie and Barons.

CHAP. 25.

The same order touching triall by enquest of xij men
is taken in Treason, but the paine is more cruell.
First to be hanged, taken downe alive, his bowels ta-
ken

ken out and burned before his face, then to be beheaded, and quartered, and those set vp in diversc places. If anie Duke, Marques, or any other of the degree of a Baron, or aboue, Lord of the Parliament be accused of treason, or any other capitall crime, he is iudged by his peers and equals: that is, the yeomanrie doth not go vpon him, but an enquest of the Lordes of the Parliament, and they giue their voice, not one for all, but eche severally as they doe in Parliament, beginning at the yongest Lord. And for Judge one Lord Or rather
sitteth, who is Constable of England for that day. The high steward
iudgement once ginen, he breaketh his stasse and abdicateth his office. In the rest there is no difference of England.
from that aboue written.

THE THIRDE Booke.

Of that which in other countries is called
appellation, or prouocation, to amend the iudgement
or sentence definitiue, which is thought
vniustly giuen in causes criminall.

CHAP. 1.



If the enquest of riȝt men
do seeme to the Judges &
the Justices to haue gone
too violently against the
evidence giuen in mat-
ters criminall, either it
is that vpon slender evi-
dence they haue pro-
nounced him giltie, whō
the Judges & most part

of the Justices thinkes by the evidence not suffie proved guiltie, or for some other cause, doe thinke the person rather woxthie to live than to die. The enquest is neuerthelesse dimisst: but when the Judges shoulde pronounce the sentence of death vpon the person found guiltie, he will differ it, which is called to repriue the prisoner (that is to say to sende him againe to prison) and so declare the matter to the Prince, and obtaine th after a time for the prisoner his pardon: and as for punctionation or appeale which is vsed so much in other countries, it hath no place in Englannde, after sentence givien by the xii, whereby the person is founde guiltie or not guiltie: but without that repriuine the sentence is streight put in execution by the Sherife. And if they either escape or die another death, the Sherife escaþeth not to paie a great fine and ransom at the Princes mercie: if having pregnant evidence neuerthelesse the xii doe acquite the malefactor, which they will doe sometime, and especially if they perceine either one of the Justices, or of the Judges, or some other man to pursue too much and too malitiously the death of the prisoner, and do suspect some subornation of the witnesse, or them which doe giue evidence, and sometime if they perceine the Judge would haue the prisoner escape, and in repeating the evidence doe giue them thercof some watchworde. But if they doe (as I haue saide), pronounce not guiltie vpon the prisoner against whome manisell witnesse is brought in, the prisoner escapeth: but the xii not onely be rebuked by the Judges, but also threatened of punishment, and many times commaunded to appeare in the Starrechamber, or before the priuile counsell for the matter. But this threatening chaunceth oftener than the execution thereof, and the xii answere with most gentle wordes, they did it according to their consciences, and pray the Judges to be god vnto them, they did as they thought right, and as they

they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Queene nowe) that an enquest for pronouncing one not guiltie of treason contrarie to such evidence as was brought in, were not onely impriso ned for a space, but an hongre fine set vpon their heads, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were even then of many accounted verie violent, tyzannicall, and confrarie to the libertie and custome of the realme of Englannde. Wherefore it commeth verie sel dom in use, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iuste to punish them: For they are men, and subiect to corruption and parcialitie, as others be.

[What remedie is, if the sentence be
thought vnjustly giuen.

CHAP. 2.

In causes civill there is another order: for if after the matter be pleaded to the issue, and the xij men there upon impaneled, the evidence brought and pleaded before them on both the parties, the xij seeme to be parciall, and to haue giuen sentence contrarie to the evidence shewed vnto them: the partie greued may bring against them, and the partie for whome the sentence is giuen, a writ of attaint: and where as before vpon the first quest commonly they all be yeomen, now vpon this attaint must goe xiiij gentlemen dwelling within the shire, and xij at the least of the hundred where the lande lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely nowe he, who claimeth the lande, but also all

P and

No more evidence on the behalf of the plaintiff, but of the defendant there may.

The statute of 23. Henrie 8. doth not abolish common lawe, but giueth a more profitable for the plaintiff.

and euerie of the yeomen, who by their verdict did giue it him. There must in the attaint no more evidence be brought in, but onely that which was brought in, and alledged before the first enquest. And if this seconde enquest of xxiiij gentlemen doe adiudge as the first did, the plaintiff shall not onely loose the lande, but also paie a fine to the Prince and damages to the partie. If this seconde enquest doe finde that the first enquest hath gone parciallie, and against the evidence brought in before them, the first enquest is called attainted, and accounted as periured and infamed. The Prince had before the waste of all their landes and possessions with other punishments, which at this present by a lawe made by parliament in the time of king Henrie the eight is abolished, and nowe by that lawe or act of parliament, beside other punishment, each of the quest attainted payeth vnto the Prince and partie v. li. if it be vnder fourtie poundes: and if aboue, then xx. li. Attaints be verie seldom put in vse, partly because the gentlemen will not meete to flaunder and deface the honest yeomen their neighbours: so that of a long time, they had rather pay a meane fine than to appeare and make the enquest. And in the meane time they will intreate so much as in them lyeth the parties to come to some composition and agreement among them selues, as lightly they doe, except either the corruption of the enquest be too evident, or the one partie is too ob-stinate and headstrong. And if the gentleman do appeare, gladlyer they will confirme the first sentence, for the causes which I haue saide, than go against it. But if the corruption be too much evident, they will not sticke to attaint the first enquest: yet after the gentlemen haue attainted the yeomen, if before the sentence be giuen by the Judge (which ordinarily for a time is differred) the parties be agreed, or one of them be dead, the attaint ceaseth.

If

If at anie time before the sentence be ginen or put in execution, there be founde some such error in the wxit, in the proces, or forme (as our lawyers be verie precise and curious of their formes) that it may be reuocable, it is brought afresh to the disputation by a wxit of error, and all that is done reversed. But that is common to all other countries, where the ciuill lawe is vsed, which they call *de nullitate processus*, and serueth both in Englande and in other places aswell in causes criminall, as ciuill. Other kinde of appellation to reuoke processes, and to make them of short, long, or long, infinite, which is vsed by the ciuill lawe, we haue not in our common lawe of Englande. By supplicatiōn to the Prince and complaint to the Chauncelloz upon supposall of losse or lacke of evidence, or too much favour in the countrey, and power of the aduersarie, there is in our countrey as well as theirs both stopping and prolongation of Justice. For what will not busie heades and louers of trouble neuer being satisfied inuent in anie countrey to haue their desire, which is to bere their neighbours, and to liue alwaies in disquiet: Men euēn permitted of God like flies, and lise, and other vermine to disquiet them, who would imploie themselues vpon better busynesse and more necessarie for the common wealth: these men are hated, and feared of their neighbours, loued and aided of them which gaine by proces, and ware satte by the expence & trouble of other. But as these men ordinarily spende their owne thrist, and make others against their wils to spende theirs: so sometime being throughly known, they do not only liue by the losse like euill husbandes, but beside rebuke & shame, by the equitie of the Prince and courtes soueraigne, they come to be extraordina‐
rily punished, both corporally, & by their purse, which thing in my minde is as royall and princely an act, and so beneficiale to the commonwealth, as in so small a

matter a King or a Quene can doe, for the repose and good education of their subiectes.

Of that which in England is called appeale, in other places accusation.

CHAP. 3.

If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be endited, by giving information to the enquest of enquirie, (although he chaunce to escape the Constable or Justices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeaire and a day I may enter my appeale, that is mine accusation against him. If I began first to pursue him by information or denunciation to enditement, I am nowe no partie but the Prince, who for his dutie to God and his common wealth and subiectes, must see justice executed against all malefactors & offenders against the peace, which is called Gods and his, and doth in such maner as I haue saide before. If I leaue that and will appeale, which is proper my accusation against him who hath done to me this iniurie, the defendant hath this aduaantage to put himselfe to the Jurie, which is to that which before is saide to haue that issue and triall by God and his contrarie, whereof the fashion I haue at large declared: or to demaunde the triall by battle, wherein both the parties must either themselues in person, or else finde other for them, who be called in our Lawe Champions or Campions, some doeth interprete them ^{adversarii}, because they be men chosen, fat, lustrie, fit to the feate, or as the French doe terme them adroies aux armis, which shall fight it out by ^{monachia}, or as nowe they doe call it *duellum*, or the campe, which shall haue all things equall: but according as Mars giueth the victorie,

In appeale
the battle is
tryed by the
parties onely,
and in writs of
right by
champions.

rie, so the Lawe is iudged the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more daungerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendant is onely in daunger of death. Short it is from day to sunne set, the quarell is ended, or sooner who hath the better fortune. This seemeth verie militarie (as in maner all our policie of Englande) and to haue as small to doe with Lawyers as with Phisitions, quicklie to dispatche, and for the rest to returne, eche man to his busynesse, to serue the common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things done necessarily in whot policie. At the least a common wealth militarie must aduenture many things to keepe it in quiet, which cannot seeme so precisely god to them which dispute thereof in the shadowe and in their studies: Howsoever it be, this kinde of triall of long time hath not bene vsed. So that at this time we may rather seeke the experiance of it out of our histories of time passed, than of any biewe or sight thereof, of them which are nowe aline. Nevertheless the Lawe remaineth still, and is not abolished, and if it shall chaunce the murtherer or manslayer (the one we call him that lyeth in waite, and as they terme it in Frenche de guet appendaunt killeth the man, the other who by casuall falling out and soudaine debate and choler doeth the same which way soever it be done) if he that hath slaine the man, hath

The battle or
Iurie is at the
election of
the defendant

his pardon of the prince, as occasion or the fauour of the Prince may so present, y he may haue it, yet the partie grieved hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denyed him. And if the defendant either by great assise or by battle be conuinced vpon that appeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the Lawe of our Realme to iustice and to the punishment of bloud violently shed.

Of the Court of Starre Chamber.

CHAP. 4

There is yet in Englande an other courf, of the which that I can understand there is not the like in any other Countrie. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those daies when the Lawe is exercised in Westminster hall, which as I haue said is but at certaine times and termes) every weeke once at the least, (which is commonly on Fridaies, and Wednesdaies, and the next day after that the Terme doth ende,) the Lordes Chauncelorz, and the Lordes and other of the priuie Counsell, so many as will, and other Lordes and Barrons which be not of the priuie Counsell, and be in the towne, and the Judges of England, specially the two chiese Judges, from ix. of the clocke till it be xij. doe sit in a place which is called the Starre chamber, either because it is full of windowes, or because at the first all the rofe thereof was decked with images of Garres gilted. There is plaints heard of riots. Riot is calld in our English terme or speache, where any number is assembled with force to doe any thing: and it had the beginning, because that our being much accus

omed

stomed either in soyme wars, in Fraunce, Scotland,
or Irelande, or being ouermuch exercised with ci-
vill warres within the Realme (which is the fault
that falleth ordinary amongest bellicous nations)
Wherby men of warre, Captaines and souldiers be-
come plentiful: which when they haue no externe ser-
vice wherewith to occupie their busie heads and hands
accustomed to fight and quarell, must needes seeke qua-
rels and contentions amongst themselues, and be-
come so readie to oppresse right among their neigh-
bours, as they were wont before with praise of man-
hode, to be in resisting iniurie offered by their ene-
mies. So that our nation vsed hereunto, and vpon that
more insolent at home, and not easie to be gouerned by
Lawe and politike order, men of power beginning ma-
ny fraies, and the stronger by factions and parties of-
fering too much iniurie to the weaker, were occasions
of making god Lawes. First of reteiners, that no
man should haue aboue a number in his Liverie or re-
tinie: then of the enquirie of routs and riots at euerie
Hessions, and of the lawe whereby it is prouided that
if any by force or by riot enter vpon any possessions,
the Justices of the peace shal assemble themselues & re-
move the force, & within certaine time enquire thereof.
And further, because such things are not commonlie
done by meane men, but such as be of power and force,
& be not to be dealt withal of euerie man, nor of meane
Gentlemen: if the riot be found & certified to the Kings
Counsell, or if otherwise it be complained of, the
partie is sent for, and he must appeare in this Starre
chamber, where sicing (except the presence of the
Prince onely) as it were the maiestie of the whole
Realme before him, being never so stoute, he will be
abashed: and being called to aunswere (as he must
come of what degree soever he be) he shall be so charged
with such grauitie, with such reason & remonstrance,

Sent for by
Subpna.

and of those chiese personages of Englande, one after
an other handeling him on that sozt, that what cou-
rage soever he hath, his heart will fall to the grounde,
and so much the more, when if he make not his aun-
swere the better, as seldoime he can so in open violence,
he shalbe commaunded to the fléete, where he shal be
kept in prison in such sozt as these Judges shall ap-
point him, lie there till he be wearie aswell of the re-
straint of his libertie, as of the great expences, whiche
he must there sustaine, and for a time be forgotten,
whiles after long suite of his friendes, he will be glad
to be ordered by reason. Sometyme as his deserts be,
he payeth a great fine to the Prince, besidcs great
costs and dammages to the partie, and yet the mat-
ter wherefore he attempteth this riot and violence is
remitted to the common Lawe. For that is the effect
of this Court to bridle such stout noble men, or Gen-
tlemen which woulde offer wronng by force to any man-
ner men, and cannot be content to demaund or defend
the right by order of Lawe. This court began long
before, but tooke great augmentation and authoritie
at that time that Cardinall Wolley Archebishop of
Yorke was Chauncelloz of Englande, who of lome
was thought to haue first deuised y Court, because that
he after some intermission by negligence of time, aug-
mented the authoritie of it, whiche was at that tune
maruellous necessary to doe, to represse the insolencie
of the noble men and Gentlemen of the North partes
of Englande, who being farre from the King and the
seate of justice made almost as it were an ordinarie
warre among themselves, and made their force their
Lawe, banding themselves with their tenaunts and
seruaunts to doe or revenge iniurie one against another
as they listed. This thing seemed not supportable
to the noble prince King Henrie the eight: and sending
for them one after another to his Court to aunswere
before

before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and bene well disciplined as well by wordes as by fletting a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to understande that they had a Prince who would rule his subiectes by his lawes and obedience. Sith that time this court hath bene in more estimation, and is continued to this day in manner as I haue sayde before.

Of the Courts of Wards and Liueries.

CHAP. 5.

HE whom we call a warde in Englannde, is called in Latine *pupillus*, and in Greke *apparos*. The gardian is called in Latine *tutor*, in Greke *imētēs*. A warde or infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minorem*, the one to *riiiij.* yere old, the other was accounted from thence to *xxv.* And as *pupillus* had *tutorem*, so *minor* had *curatorem* till he came to the age of *xxv.* These *tutors* or *curators* were accountable for the revenues of the pupils *minors* lands, & great prouision and many lawes and orders is made for them in the booke of the ciuill Lawe, for rendering just & true accounts. So that to be a gardian or *tutor* was accounted among them to be a charge or trouble, a thing subiect to much encumbrance and small profit, so that diuerse meanes were sought for, to excuse men from it. With vs this is cleane contrarie, for it is reckened a profit to haue a warde. For the Lord of whom the warde doeth holde the lande, so soone as by the death of the fater the childe falleth warde unto him, he sealeth vpon the body of the ward and his landes, of which (so that he doeth nourish the warde,) he taketh the profit without accounts,

D

counts,

Counts, and beside that offering to his warde couena-
ble mariage without dispengement before the age of
xxi. yeres if it be a man, of xiiij. if it be a weman. If
the warde refuse to take that mariage, he or she must
pay the value of the mariage, which is commonly ra-
ted according to the profite of his landes. All this
while I speake of that which is called in French garde
noble, that is of such as holde lands of other, by knight
service, for that is an other kinde of service which we
call in French gard returier, we call it gard in socage,
that is of such as doe not holde by knight service, but by
tenure of the plough. This wardship falleth to him
who is next of the kinne, and cannot inherite the land
of the warde as the uncle by the mothers side, if the
land doe descend by the father, and of the fathers side, if
the lande descend by the mother. This gardian is ac-
countable for the revenues and profites of the lande, as
the tutor by the ciuill Lawe to the warde or pupill so
lone as he is of full age.

The man is not out of wardshippe by our lawe till
xxi. yere olde, from thence he is reckoned of full age, as
well as in the Romane lawes at xxv. The woman at
xiiij. is out of warde, for she may haue an husbande a-
ble to doe knightes seruice say our bookes. And be-
cause our wifes be in the power (as I shall tell you
hereafter) of their husbands, it is no reason, she should
be in two diuerse gards.

Many men doe esteeme this wardship by knightes
service verie vniust, and contrarie to nature, that a Freeman and Gentleman should be
bought and solde like an horse or an ore, and so change
gardians as masters and lordes: at whose gouerne-
ment not onely his bodie but his landes and his houses
should be, to be wasted and spent without accountes,
and then to marie at the will of him, who is his natu-
rall Lord, or his will who hath bought him, to such as
he

Gardian in
cheualrie, and
gardian in
Socage.

he like not peradventure, or else to pay so great a ran-
some. This is the occasion they say, why many gen-
tlemen be so euill brought vp touching vertue and lea-
ning, and but onely in deintinesse and pleasure: and
why they be maried verie young and before they bee
wise, and many times do not greatly lome their wifes.
For when the father is dead, who hath the natural care
of his childe, not the mother, nor the vncle, nor the
next of kinne, who by all reason would haue most na-
turall care to the bringing vp of the infant and *minor*,
but the Lorde of whom he holdeth his land in knights
seruice, be it the King or Quene, Duke, Marquesse, or
any other, hath the gouvernement of his bodie and ma-
riage, or else who that bought him at the first, seconde
or thirde hande. The Prince as having so many, must
needes giue or sell his wardes away to other, and so he
doeth. Other doe but seeke which way they may
make most aduaantage of him, as of an ore or other
beast. These all (say they,) haue no naturall care
of the infant, but of their owne gaine, and especially
the buyer will not suffer his warde to take any great
paines, either in studie, or any other hardenesse, least
he shold be sick and die, before he hath maried his
daughter, sister or cousin, for whose sake hee bought
him: and then all his money which he paide for him
shold be lost. So he, who had a father, which kept a
god house, and had all thinges in order to maintaine it,
shall come to his owne, after he is out of Wardshippe,
woods decayed, houses fallen downe, stocke wasted and
gone, lande let forth and plowed to the baren, and to
make amends, shall pay yet one yeares rent for reliefs
and sue ouster le maind, beside other charges, so that
not of manie yeres and peradventure never he shal be
able to recouer, and come to the estate where his fater
left it. This as it is thought was first graunted vpon
a great extremitie to King Henric the 3. for a time

But the Lorde
shalbe puni-
shed for the
wast, by losse
of the ward, or
treble dam-
ages, if that
suffice not.

Upon the warre which he had with his Barons, and afterwarde increased, and multiplied to more and more persons and grievances, and will be the decay of the nobilitie and libertie of Englaunde. Other againe say, the warde hath no wronng. For either his father purchased the lande, or it did discende unto him from his auncesters with this charge. And because he holdeth by knyghtes seruice, which is in armes and defens, seeing that by age he cannot doe that whereto hee is bound by his lande, it is reason he aunswere that profite to the Lorde, whereby he may haue as able a man to doe the seruice. The first knyghtes in Rome, those that were chosen *equites Romani*, had *equum publicum* on which they served, and that was at the charge of widowes and wardes, as appeareth by Titus Liuius, because that those persons could not doe bodily seruice to the commen wealth. Wherefore this is no new thing, but thought reasonable in that most wise commen wealth, and to the prudent King Seruius Tullius. As for the education of our commen wealth, it was at the first militaire, and almost in all thinges the scope and desaigne thereof is militaire. Yet was it thought most like, that noble men, god knyghtes, and great capaines would bring vp their wardes in their owne feates and vertues, and then mary them into like rase and stocke where they may finde and make friendes, who can better looke to the education or better skill of the bringing vp of a gentleman, than he who for his higher nobilitie hath such a one to holde of him by knyghtes seruice, or would doe it better than he that looketh or may claime such seruice of his ward, when age and yeres will make him able to doe it. That which is saide that this maner of wardship began in the time of King Henrie the 3. cannot seeme true. For in Normandie and other places of Fraunce the same order is.

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And that Statute made in King Henrie the thirds time touching wards, to him that will wey it wel, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more conuenient to dispute. This may suffice to declare the manner of it.

Of Wiues and mariages.

CHAP. 6.

The wiues in Englande be as I saide *in potestate maritorum*, not that the husbande hath *vite ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I haue saide before, but that whatsoeuer they haue before mariage, as soone as mariage is solemnised is their husbandes, I meane of money, plate, iuelles, cattaile, and generally all moueables. For as for lande and heritage followeth the succession, and is ordered by the Lawe as I shall say hereafter: and whatsoeuer they gette after mariage, they get to their husbands. They neither can give nor sell anie thing either of their husbandes, or their owne. Theirs no moueable thing is by the lawe of England *constantia matrimonio*, but as *peculum serui aut filii familias*: and yet in moueables at the death of her husbande she can claime nothing, but according as he shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executoz if he die testate. Yet and custome, that when a man dieth, his goods be diuided into thre partes. One thirde is employed vpon the buriall and the bequestes which the testator maketh in his testament. An other thirde part the wife

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hath

hath as her right, and the thirde third part is the dewe and right of his chilzen, equally to be diuided among them. So that a man there can make testament but of one thirde of his gods: if he die intestate, the funerals deducted the gods be equally diuided betwene the wife and the chilzen.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometime the Archdeacon, Deane, or Prebendarie by priuilege and prescription, doth commit the administration of the gods to the widowe or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth vnto, and the Ordinarie by common vnderstanding hath such grauitie and discretion as shalbe meete for so absolute an authoritie for the most part, following such division as is vsed in London, either by thirdes or halves. Our foreshathers newelie converted to the Christian faith had such confidence in their pastors and instructors, and tooke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would seeke no priuate profit to themselues thereby, that being once soordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of parliament made in the time of King Henrie the eight, touching the probate of testamente committing of administration & mortuaries. But to turne to the matter which we nowe haue in hande, the wife is so much in the power of her husband, that not onely her gods by mariage are freight made her husbandes, and she loseth all her administration which she had of them: but also where all English men haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the font, the surname is the name of the gentilitie and

Stocke

stocke which the sone doeth take of the father alwaies, as the olde Romans did, our daughters so sone as they be maried loose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their familie into another. So that if my wife was called before Philippe Wilsford by her owne name and her fathers surname, so sone as she is maried to me she is no more called Philippe Wilford, but Philippe Smith, and so must she write and signe: and as she chaungeth husbandes, so she chaungeth surnames, called alwaies by the surname of her last husbande. Yet if a woman once marrie a Lorde or a Knight, by which occasion she is called my Ladie with the surname of her husbande, if he die and she take a husbande of a meaner estate by whom she shall not be called Ladie (such is the honour we doe give to women) she shall still be called Ladie with the surname of her first husbande and not of the seconde.

Yet she is no
Ladie by the
common law,
although so
called of
courtesie.

I thinkie among the olde Romans those marriages which were made *per coemptionem in manum*, and *per as* and *libram* made the wife *in manu & potestate viri*, wherof also we had in our olde lawe and ceremonies of mariage, a certayne memorie as a viewe and *vestigium*. For the woman at the Church doze was giuen of the father or some other man next of her kinne into the handes of the husbande, and he layde downe golde and siluer for her upon the booke, as though he did buy her, the priest belike was in stede of Lipriepus: our mariages be esteemed perfect by the law of Englande, when they be solemnished in the Church or Chappell, in the presence of the priest and other witnesses. And this onely maketh both the husbande and the wife capable of all the benefites whicheour lawe doth giue vnto them and their lawefull children. In so much that if I marrie the widow of one lately dead, which at the time

of her husbandes death was with childe, if the childe be boorne after mariage solemnished with me , this childe shalbe my heire , and is accounted my lawefull sonne, not his whose childe it is in deede , so precisely we doe take the letter where it is saide , *pater est quem nuptia demonstrant* . Those waies and meanes which Iustini-an doeth declare to make bastardes to be lawefull chil-dren, muliers or rather melieurs (for such a terme our lawe vseth for them which be lawefull chil-dren) be of no effect in England , neither the Pope nor Emperour, nor the Prince himselfe neuer could there legitimate a bastarde to enjoy any benefite of our Lawe, the par-liament hath onely that power.

Although the wife be (as I haue written before) *in manu & potestate mariti* , by our Lawe yet they be not kept so streit as in new and with a gard as they be in Italy and Spaine , but haue almost as much liber-tie as in Fraunce, and they haue for the most part all the charge of the house and houshalde (as it may ap-peare by Aristotle and Plato the wifes of the Greces had in their time) which is in deede the naturall occu-pation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force , and with all forren matters which is the naturall part and office of the man, as I haue written before . And al-though our Lawe may seeme somewhat rigozous to-ward the wiues, yet for the most part they can handle their husbandes so well and so doulcely, and specially when their husbands be sicke: that where the Lawe gi-ueth them nothing , their husbandes at their death of their good will giue them all. And fewe there be that be not made at the death of their husbandes either sole or chiefe executrices of his last will and testament, and haue for the most part the gouernement of the children and their portions : except it be in London , where a peculiar order is taken by the citie much after the fa-shion

tion of the ciuill lawe.

All this while I haue spoken onely of moveable goods: if the wife be an enheretrix & bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwardes, the husbande can not sell nor alienate the same, no not with her consent, nor she her selfe during the mariage, except that she be sole cramined by a Judge at the common lawe: and if he haue no childe by her and she die, the lande goeth to her next heires at the common lawe: but if in the mariage she haue a childe by her, which is hearde once to crie, whether the childe live or die, the husbande shall haue the vsufruite of her landes, (that is the profitte of them during his life) and that is called the countesse of Englande.

Likewise if the husbande haue any lande either by inheritance descended or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one thirde part of his landes. That is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath any children, the rest descendeth streight to the eldest: if he hath none, to the next heire at the common lawe: and if she mislike the diuision, she shal aske to be indowed of the fairest of his landes to the thirde part.

This which I haue written touching mariage and the right in moveables and unmoveables which commeth thereby, is to be vnderstoode by the common lawe when no priuate contract is more particularly made. If there be any priuate pacts, covenants, and contracts made before the mariage betwixt the husbande and the wife, by theselues, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made. And this is y-

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nough of wines and mariage.

Of Children.

CHAP. 7.

Our children be not in potestate parentum, as the children of the Romans were: but as soone as they be puberes, which we call the age of discretion, before that time nature doth tell they be but as it were partes parentum. That which is theirs they may give or sell, and purchase to themselves either lands and other moueables the father hauing nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui heredes* complaints, de *in officioso testamento* or *prateritorum liberorum non emancipatorum* haue no effect nor vse in our lawe, nor we haue no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoptio* nor *arrogatio*. The testator disposereth in his last will his moueable goods fr̄eely as he thinketh meete and conuenient without controlement of wife or children. And our testamentees for goods moueable bee not subiect to the ceremonies of the ciuill lawe, but made with all libertie and fr̄edome, and *sive militari*. Of landes as ye haue understande before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shifft they can to live: except that the father in life time doe make some conuiance and estates of part of his land, to their vse, or else by devise, which word amongst our lawiers doth betoken a testament written, sealed and delivereed in the life time of the testator before witnesse: for without those ceremonies a bequest of landes is not available.

auailable. But by the common lawe if he that dieth hath no sonnes but daughters, the lande is equally diuided among them, which portion is made by agreement or by lotte. Although (as I haue sayde) ordinarily and by the common lawe, the eldest sonne inheriteth all the landes, yet in some countryes all the sonnes haue equall portion, and that is called ganckinde, and is in many places in Kent. In some places the youngest is sole heire: and in some places after an other fashion. But these being but particular customes of certaine places and out of the rule of the common law, doe little appertain to the disputation of the policie of the whole Realme, and may be infinito. The common wealth is judged by that which is most ordinarily and commonly done through the whole Realme.

Of Bondage and Bondmen.

CHAP. 8.

After that we haue spoken of all the sortes of free-men according to the diversitie of their estates and persons, it resteth to say somewhat of bondmen which were called *serui*, which kinde of people & the dispositiōn of them and about them doeth occupie the most part of Iustinians Digestes, and Code. The Romans had two kindes of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawefull acquisition, or else borne of their bonde women and called *verna*: all those kinde of bondmen be called in our lawe *villeins* in grosse, as ye would say immediatly bonde to the person and his heires. An other they had (as appeareth in Iustinians time), which they called *adscripticij glebe* or *agri censi*. These were not bond to the person, but to the mannor

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or place, and did followe him who had the manors, and in our lawe are called villaines regardantes, for be-
cause they be as members, or belonging to the manor
or place. Neither of the one sort nor of the other haue
we any number in Englande. And of the first I never
knewe any in the realme in my time: of the seconde so
fewe there be, that it is not almost worth the spea-
king. But our lawe doth acknowledge them in both
those sortes. Manumission of all kinde of villaines or
bondmen in Englande is vsed and done after diuerse
sortes, and by other and more light and easie meanes
than is prescribed in the ciuill lawe, and being once
manumitted, he is not *libertus manumissionis*, but sim-
ply *liber*: howbeit sith our Realme hath receiued the
Christian religion whiche maketh vs all in Christ bre-
thren, and in respect of God and Christ *conservos*, men
began to haue conscience to holde in captiuitie and such
extreme bondage him whome they must acknowledge
to be his brother, and as we vse to terme him Christi-
an, that is who looketh in Christ and by Christ to haue
equall portion with them in the Gospell and saluation.
Upon this scruple, in continuance of time, and by long
succession, the holie fathers, Monkis and Friers in
their confession, and specially in their extreme & dead-
ly sicknesses, burdened the consciences of them whome
they had vnder their handes: so that temporall men by
little and little by reason of that terror in their consci-
ence, were glad to manumit all their villaines: but the
said holie fathers, with the Abbots and Priors, did not
in like sort by theirs, for they had also conscience to
impoverish and dispoule the Churches so much as to
manumit such as were bond to their Churches, or to
the manors whiche the Church had gotten, and so kept
theirs still. The same did the Bisshoppes also till at the
last and nowe of late some Bisshoppes to make a p̄ce of
money manumitted theirs partly for argent, partly for
gaun-

flaunders, that they seemed moe cruel than the temporaltie: after the monasteries comming into temporall mens handes haue bene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly no; in that sort as the bondmen at the Romane ciuill law, as appeareth by their Comedies, no; as in Grece as appeareth by theirs: but they were suffered to enioie coppieholde lande to gaine and get as other serues that nowe and then their Lordes might fleese them and take a pece of money of them, as in France the Lordes doe taile them whom they call their subiectes at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in Fraunce and England the chaunge of religion to a moe gentle, humane and moe equall sort (as the Christian religion is in respect of the Gentiles) caused this olde kinde of seruile seruitude and slauerie to be brought into that moderation, for necessitie first to villaines regardants, and after to seruitude of landes and tenures, and by little and litle finding out moe ciuill and gentle meanes and moe equall to haue that done which in time of heathenesse seruitude or bondage did, they almost extinguished the whole. For although all persons christians be brethren by baptisme in Iesu Christ, and therefore may appeare equally free: yet some were and still might be christianed being bond and serue, and whom as the baptisme did finde so it did leaue them, for it chaungeth not ciuill lawes nor compacts amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Which seeing men of god conscience having that scruple whereof I wrote before, haue by little and litle found meanes to haue and obtaine the profit of seruitude and bondage which gentilitie did vse and is vsed to this day amongst Christians on the one part, and Turkes and Gentils on the other

other part, whē warre is betwixt them upon those whō they take in battaile. Turkes and Gentiles I call them, whitch vsing not our Lawe the one belieueth in one God, the other in many gods, of whom they make Images. For the Lawe of Jewes is well ynochough knownen, & at this day so farre as I can learne, amongst all people Jewes be holden as it were in a common seritude, and haue no rule nor dominion as their own prophesies doe tell that they should not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinately for-saking their helpe in soule for the life to come and honour in this world for the time present, not taking the good tidinges, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentils & brought forth this humanitie, gentlenesse, honour and godlie knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians not to make noz keepe his brother in Christ, seruile, bonde and vnderling for ever unto him, as a beast rather than as a man, and the humanitie whitch the Christian religion doeth teach, hath engendred throught Realmes (not neare to Turkes and Barbarians), a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion thereof. So that some would not haue bondmen, but adscriptiō glebe, & villaines regardant to the ground, to the intent their seruice might be furnished, and that the countrie being euill, unwholsome, and otherwise barren, shouly not be desolate. Others afterwardes found out the waies and meanes, that not the men but the land shouly be bound and bring with it such bondage and seruice to him that occupieth it, as to ca-

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rie the Lordes dung vnto the fieldes, to pleugh his ground at certaine daies, sowe, reape, come to his Court, sweare faith vnto him, and in the ende to holde the lande but by copie of the Lordes court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or servile tenure: yet to consider moxe dēpely all lande, even that which is called most free lande, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receive the water and filth which falleth from the higher ground, nor such as Iustinian speaketh of *de seruitudinibus prediorum rusticorum & urbanorum*, but the lande doeth bring a certaine kinde of seruitude to the possessor. For no man holdeth land simply free in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fē, that is vpon a faith or trust, and some seruices to be done to another Lord of a Mannor as his superior, and he againe of an higher Lord, till it come to the Prince & him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstode to be holden of the Crowne, and in captie, which is much like to Knights seruice, and draweth vnto it thēe seruices, homage, ward and mariage: That is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the lande. His sonne who holdeth the land after the death of his father, shall be maried where it pleaseth the Lord. He that holdeth the lande most freely of a temporall man (for franke almosē and franke mariage hath an other cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lord, and doe such seruice as appertaineth for the land which he holdeth of the Lord. So that all free lande in Englande is holden in fē or feodo, which is asmuch to say as in fide or fiducia: That is, in trust and confidence, that he shall be true to the

Lorde of whom he holdeth it, pay such rents, doe such seruice, and obserue such conditions as was annexed to the first donation. Thus all sauing the Prince be not *viri domini*, but rather *fiduciarij domini, & possessores*:

Littleton did not interpret the word *feoda* *simplex*, but rather define or describe the nature therof.

Littleton seene in the tongues as Sir Thomas Smith was in Littleton.

This is a more likely interpretation than that which Littleton doeth put in his booke, who saith that *feodium idem est quod hereditas*, which it doeth betoken in no language. This hapneth many times to them who be of great witte and learning, yet not seene in many tongues, or marketh not the deduction of wordes which time doth alter. *Fides* in Latine the Gothes comming into Italie, and corrupting the language, was turned first into *fede*, and at this day in Italie they wil say in *fide*, *en fede* or *ala fe*. And some vncunning Lawyers that would make a newe barbarous latine worde to betoken lande given *in fidem*, or as the Italian faith in *fede*, or *fe*, made it in *feudum* or *feodium*. The nature of the worde appeareth more evident in those which we call to *fes*, *feoff* or *feoffees*, the one be *fiduciarij possessores*, or *fidei commissarij*, the other is, *dare in fiduciam*, or *fidei commissum*, or more latinely, *fides committere*. The same Littleton was as much deceipted in *withernam*, & diuise other olde wordes. This *withernam* he interpreteth *vetitum namium*, in what language I knowe not: whereas in trueth it is in plaine Dutche and in our olde Saxon language, wyther nempt, *alterum accipero*, *iterum rapere*, a worde that betokeneth that which in barbarous Latine is called *represalia*, when one taking of me a distresse, which in Latine is called *pignus*, or any other thing, and carrying it away out of the iurisdiction wherein I dwelle, I take by order of him that hath iurisdiction, another of him againe or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwelle, that by equall wrong I may come to have equall right. The manner of *represalia*, and that we call *withernam*, is not altogether

ther one: But the nature of them both is as I haue described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maxime in genui*, yet by an- nering a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine seruitude or rather libertinitie: That the tenaunts beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine seruice as *libertus*, or *clens patrono*: Which because it doeth not consist in the persons, for the respect in them doeth not make them bonde, but in the lande and occupation thereof, it is more properly expressed in calling the one tenaunt, the other Lord of the ffe, than either *libertus* or *clens* can doe the one, or *patronus* the other: for these wordes touch rather the persons, and the office and duetie betwene them, than the possessions. But in our case leauing the possession and lande, all the obligation of seruitude and ser- vice is gone.

An other kinde of seruitude or bandage is vsed in Englande for the necessitie thereof, which is called apprenticehode. But this is onely by couenant, and for a time, and during the time it is *vera servitus*. For whatsoeuer the apprentice getteth of his owne labour, or of his masters occupation or stocke, hee getteth to him whose apprentice he is, he must not lie forth of his masters dores, he must not occupie anie stocke of his owne, nor mary without his masters licence, and he must doe all seruile offices about the house, and be obedient to all his masters commaundementes, and shall suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing, his master being bounde onely to this which I haue saide, and to teache him his occupation, and for that he

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seruets¹³, some for viij. or viii. yeres, some ix. or x. yeres, as the masters and the friendes of the young man shall thinke meete or can agrē: altogether (as Polidore hath noted) *quasi pro emptitio seruo*: neuerthelſle that neither was the cause of the name apprentice, neither yet doth the wozde betoken that which Polydore supposeth, but it is a frenche wozde, and betokeneth a learner or scholer. Apprendre in frenche is to learne, and apprentice is as much to say in frenche (of which tongue we borrowed this wozde and many more other) as *discipulus* in Latine: likewise he to whom he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agrēd vpon, be put in writing, signed and sealed by the parties, and registered for more assurance: without being such an apprentice in London, and seruing out such a servitude in the same Citie for the number of yeares agrēd vpon, by order of the Citie amongst them, no man being neuer so much borne in London, and of parentes londoners is admitted to be a Citizen or frē man of London: the like is vsed in other great Cities of Englande. Besidē apprentices, others be hired for wages, and be called seruautes or seruing men and women throughout the whole Realme, which be not in such bondage as apprentices, but serue for the time for daily ministrie, as *serui* and *ancille* did in the time of gentilitie, and be for other matters in libertie as full frē men and women.

But all seruaunts, labourers and others not maried, must serue by the yere: and if he be in couenaunt, he may not depart out of his service without his masters licence, and he must give his master warning that he will depart one quarter of a yare before the terme of the yare expireth, or else he shalbe compelled to serue out an other yare. And if any young man unmaried be without seruice, he shalbe compelled to get him a ma-

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The sonnes of
freemen of
London are
also free by
birth, accord-
ing to the
custome.

ster whom he must serue for that yere, or else he shalbe punisched with stockes and whipping as an idle vagabond. And if any man maried or unmaried, not hauing rent or living sufficient to maintaine himselfe, doe live so idly, he is enquired of, and sometime sent to the gaole, sometime other wise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of the chiefe charges of the Justices of peace in euerie Shire. It is taken for vngentlenesse and dishonour, and a shewe of enmitie, if any gentleman doe take an other gentlemans seruaunt (although his master hath put him away) without some certificate from his master either by worde or writing, that he hath discharged him of his seruice. That which is spoken of men seruauntes, the same is also spoken of women seruauntes. So that all youth that hath not sufficient revenues to maintaine it selfe, must needes with vs serue, and that after an order as I haue written. Thus necessitie and want of bondmen hath made men to vse free men as bondmen to all seruile seruices: but yet more liberally and freely, and with a more equalitie and moderation, than in time of gentilitie slaues and bondemen were wont to be vised, as I haue saide before. This first and latter fashion of temporall seruitude, and vpon paction is vised in such countryes, as haue left off the olde accustomed maner of seruaunts, slaues, bondmen and bondwomen, which was in vse before they had received the Christian faith. Some after one sort, and some either more or lesse rigorously, according as the nature of the people is inclined, or hath deuised amongest themselues for the necessitie of seruice.

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Of the Court which is Spirituall or Ec-
clesiasticall, and in the booke of Law, Court
Christian, or *Curia Christianitatis*.

CHAP. 9.

The Archbishops and Bishops haue a certaine peculiare iurisdiction vnto them especially in soure maner of causes: Testaments and legations, Tythes and mortuaries, mariage and adulterie or fornication, and also of such thinges as appertaine to orders amongest themselues and matters concerning religion. For as it doeth appeare, our auncestors hauing the common wealth before ordeined & set in frame, when they did agree to receiue the true and Christian religion, that which was established before, and concerned externe policie (which their Apostles, Doctoris and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those thinges in keeping whereof they made conscience, they committed to them to be ordered and gouerned as such thinges, as of which they had no skill, as to men in whom for the holinesse of their life and godd conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashyon and maner of the lawe ciuill or rather common by citation, libel, *contestationem huius*, examination of witnessesse pruifie, by exceptions, replicationis apart and in writing, allegations, matters by sentences given in writing, by appellations from one to an other as well a grauamine as a *sententia definitiva*, and so they haue other names, as Proctor, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our order in the common lawe of Englande, and from that fashyon whiche I haue shewed you before. Where-

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fore if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executor or administrator which is he in our lawe, who is in the ciuill lawe heres or honoris mobilium possessor ab intestato) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituali be so diuided, that whosoever sueth for any thing to Rome or in any spirituall court for that cause or acti-
on which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande he falleth into a premunire, that is hee forsetteth all his gods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessor which receiueth and doth maintaine that usurped pleading doeth incur the same daunger. Whether the word premunire doeth betoken that the authortie & iurisdiction of the realme is prouided for before, and defended by that lawe, and therefore it hath that name premunire or premunri, or because that by that lawe such an attenture hath had warning giuen before to him of the daunger into which he falleth by such attempt, and then premunire is barbarously written for pramonere, pramoneri, (as some men haue helde opinion) I will not define, the effect is as I haue declared: and the lawe was first made in King Richarde the secondes time, and is the remedie which is vsed when the spirituall iurisdiction will goe about to encroch any thing vpon the temporall courts. Because this court or forme which is called curia christianitatis, is yet taken as appeareth for an externe and forren court, and differeth from the policie and manner of gouernement of the Realme, and is an other court (as appeareth by the act and writ of premunire) than curia regis aut reginae: Yet at this present this court as well as others hath her force, power, authortie, rule

rule and iurisdiction, from the royll maiestie and the crowne of Englannde & from no other forren potentate or power vnder God, which being granted (as indeede it is true) it may now appeare by some reason that the first Statute of premunire whereof I haue spoken, hath nowe no place in Englannde, seeing there is no pleading *alibi quam in curia regis ac reginae.*

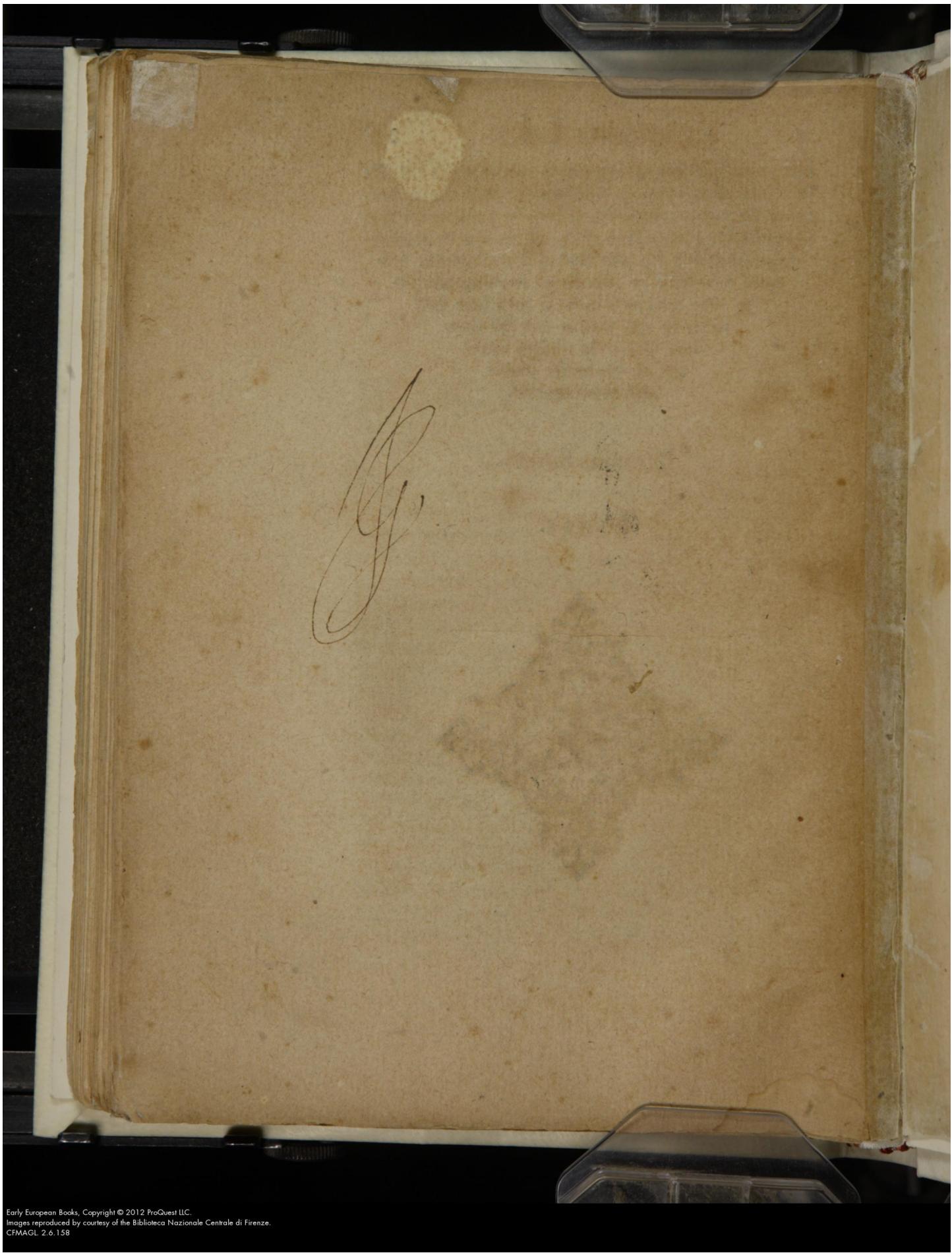
I haue declared summarilie as it were in a chart or mappe, or as Aristotle termeth it *as in rebus* the forme and manner of the gouernement of Englannde, and the policie thereof, and sette before your eyes the principall pointes wherein it doeth differ from the policie or gouernement at this time vsed in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the civill Lawe of the Romanes compiled by Iustinian into his pandects and code: not in that sort as Plato made his common Wealth, or Zenophon his kingdome of Persia, nor as Syr Thomas More his *Utopia* being feigned common wealths, such as never was nor never shall be, vaine imaginacions, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englannde standeth and is gouerned at this day the xxviiiij of March Anno 1565. in the viij yeare of the raigne and administration thereof by the most vertuous and noble Queene Elizabeth, daughter to King Henrie the eight, and in the one & fifteth yers of mine age, when I was ambassadoz for her maiestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, hauing then raigned iiij yearesh. So that whether I wrot true or not, it is easie to be seene with eies (as a man would say) and felt with handes. Wherefore this being as a project or table of a common wealth truely laide before you, not fained by putting a case: let vs compare it with common wealthes, which be at this day in esse, or doe remaine described in true histories,

histories, especially in such points wherein the one differeth from the other, to see who hath taken the righter, truer, and moze commodious way to governe the people aswell in warre as in peace. This will be no illib-
rall occupation for him that is a Philosopher and
hath a delight in disputing, nor vnpromitable
for him who hath to doe & hath god will
to serue the Prince and the com-
mon wealth in giuing coun-
sell for the better admi-
nistration thereof.

Thomas Smyth.

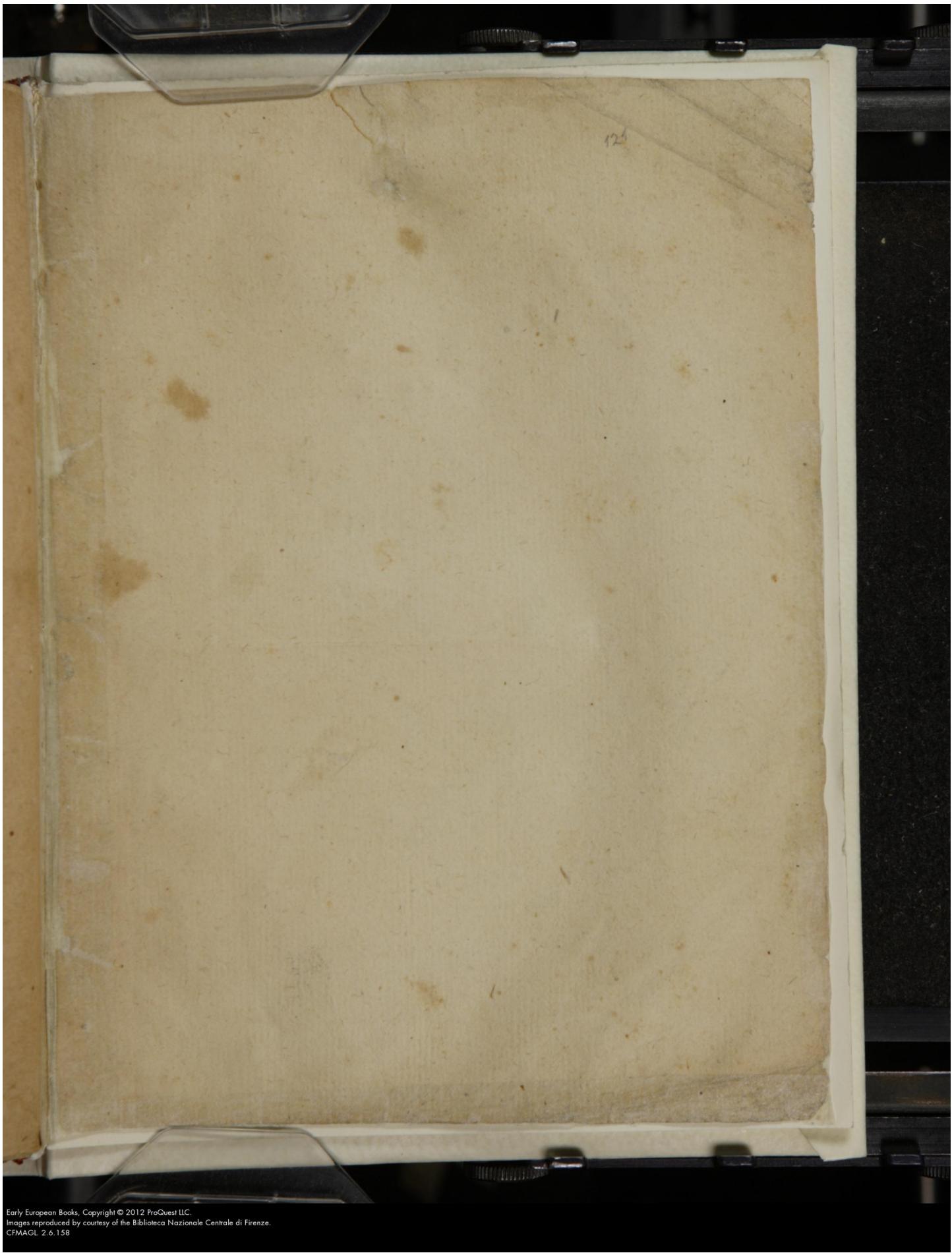
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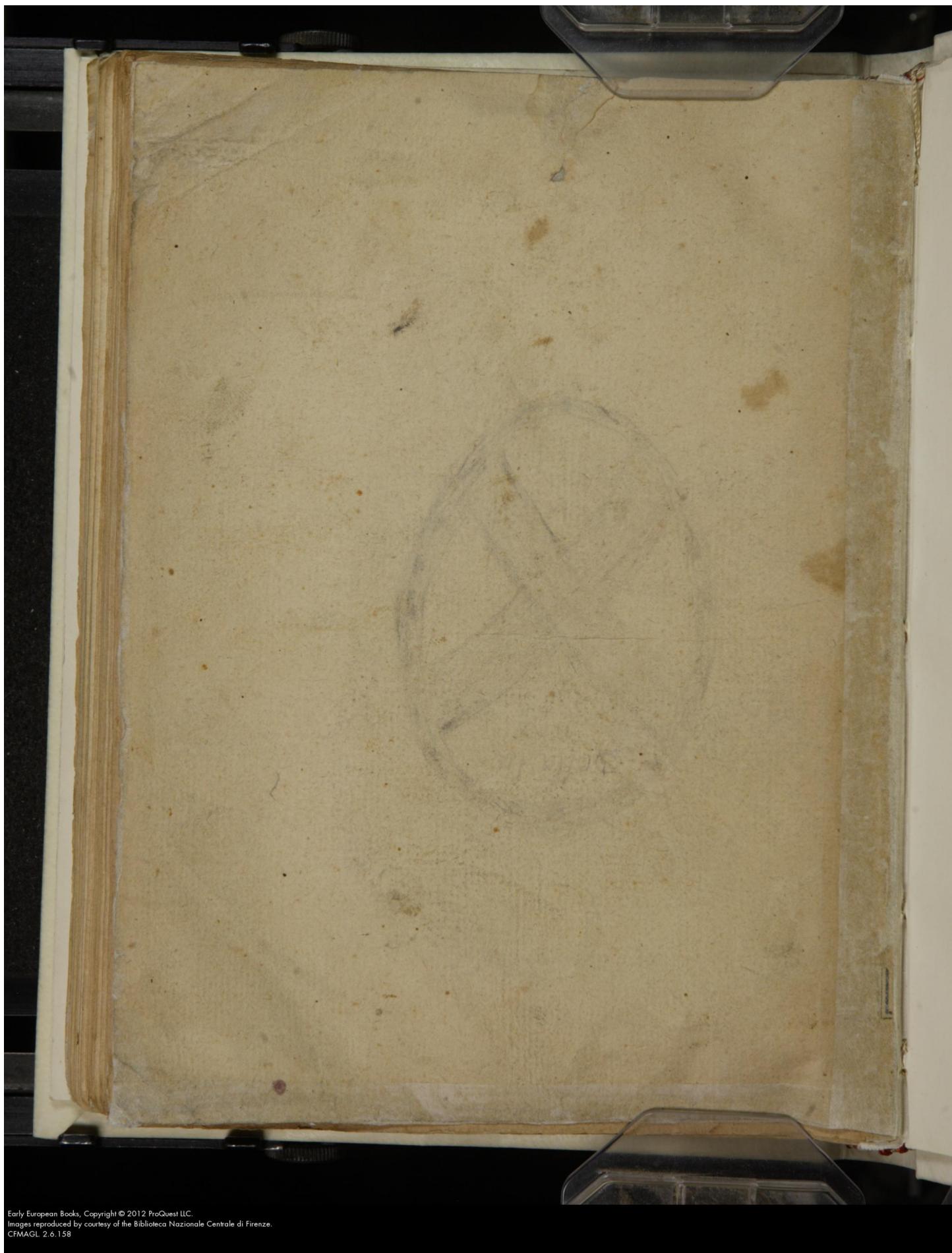




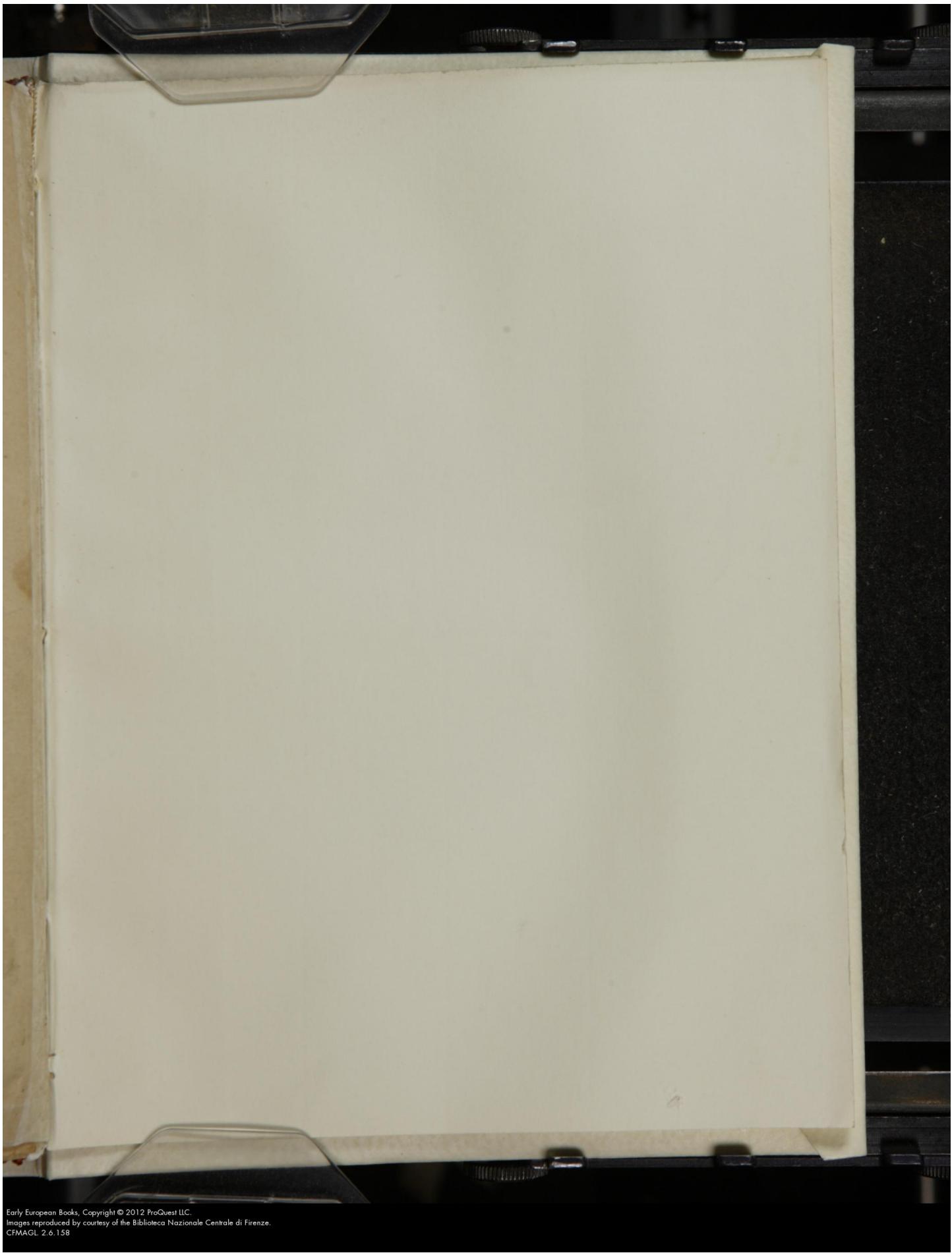
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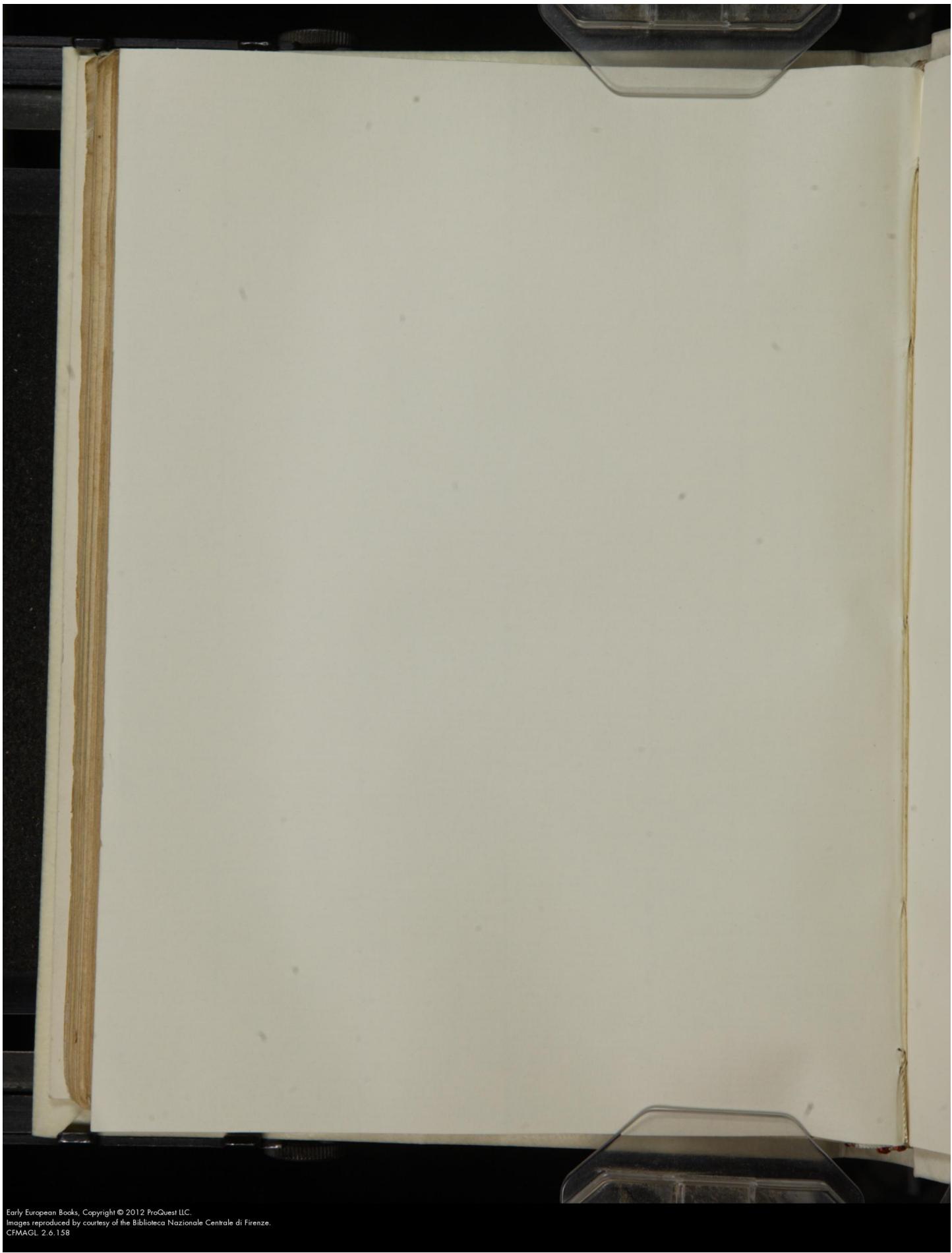
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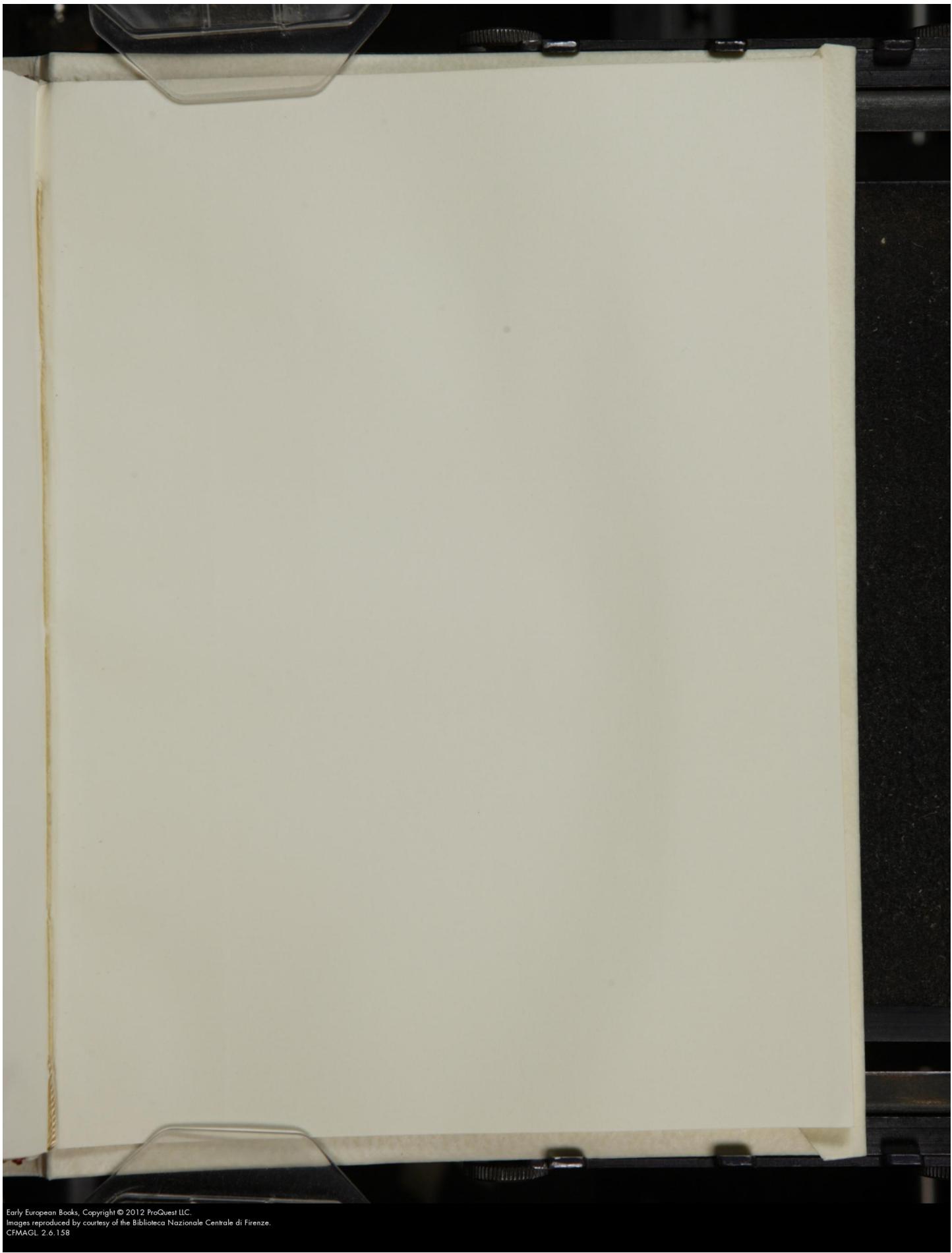


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